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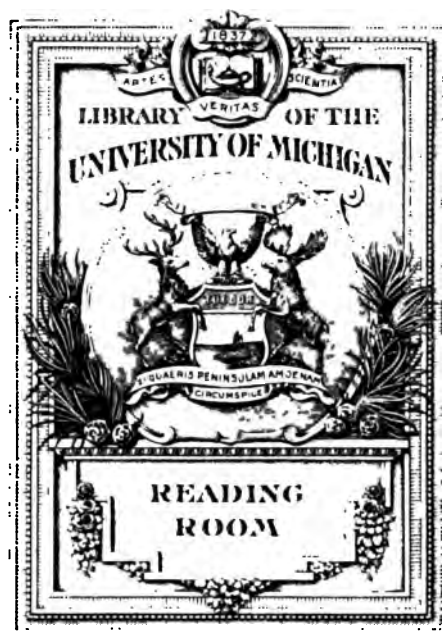
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ELOQUENCE

OF

THE UNITED STATES:

COMPILED

BY E. B. WILLISTON.

IN FIVE VOLUMES.
VOL. II.

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DISTRICT OF CONNECTICUT, SS.



BE IT REMEMBERED, That on the seventeenth day of July, in the fifty-second year of the Independence of the United States of America, E. B. WILLISTON, of the said District, hath deposited in this Office, the title of a Book, the right whereof he claims as Author and Proprietor, in the words following—to wit:

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In conformity to the Act of Congress of the United States, entitled, “ An Act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies, during the times therein mentioned.”—And also to the Act, entitled, “ An Act supplementary to an Act, entitled ‘ An Act for the encouragement of learning, by securing the copies of Maps, Charts and Books, to the authors and proprietors of such copies during the times therein mentioned,’ and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.”

CHA'S A. INGERSOLL,

Clerk of the District of Connecticut.

A true copy of Record, examined and sealed by me,

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Clerk of the District of Connecticut.

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SPEECH OF EDWARD LIVINGSTON,

ON

THE ALIEN BILL.

**DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED
STATES, JUNE 19, 1798.**



By the provisions of this bill, the President might order dangerous or suspected aliens, to depart out of the territory of the United States. The penalty, provided for disobedience of the President's order, was imprisonment and a perpetual exclusion from the rights of citizenship. The bill provided, that, if any alien, ordered to depart, should prove to the satisfaction of the President, that no injury to the United States would arise from suffering him to remain, the President might grant him a license to remain for such time as he should deem proper, and at such place as he should designate. The bill having been read the third time, the question was about to be taken on its final passage, when Mr. Livingston addressed the House as follows :

MR. SPEAKER,

I ESTEEM it one of the most fortunate occurrences of my life, that, after an inevitable absence from my seat in this House, I have arrived in time to express my dissent to the passage of this bill. It would have been a source of eternal regret, and the keenest remorse, if any private affairs, any domestic concerns, however interesting, had deprived me of the opportunity, I am now about to use, of stating my objections, and recording my vote against an act, which I believe to be in direct violation of the constitution, and marked with every characteristic of the most odious despotism.

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On my arrival, I inquired, what subject occupied the attention of the House; and being told it was the alien bill, I directed the printed copy to be brought to me, but to my great surprise, seven or eight copies of different bills on the same subject, were put into my hands; among them it was difficult (so strongly were they marked by the same family features,) to discover the individual bill then under discussion. This circumstance gave me a suspicion, that the principles of the measure were erroneous. Truth marches directly to its end, by a single, undeviating path. Error is either undermining in its object, or pursues it through a thousand winding ways; the multiplicity of propositions, therefore, to attain the same general but doubtful end, led me to suspect, that neither the object, nor the means, proposed to attain it, were proper or necessary. These surmises have been confirmed by a more minute examination of the bill. In the construction of statutes, it is a received rule to examine, what was the state of things when they were passed, and what were the evils they were intended to remedy; as these circumstances will be applied in the construction of the law, it may be well to examine them minutely in framing it. The state of things, if we are to judge from the complexion of the bill, must be, that a number of aliens, enjoying the protection of our government, are plotting its destruction; that they are engaged in treasonable machinations against a people, who have given them an asylum and support, and that there exists no provision for their expulsion and punishment. If these things are so, and no remedy exists for the evil, one ought speedily to be provided, but even then it must be a remedy that is consistent with the constitution under which we act; for, by that instrument, all powers, not expressly given to it by the union, are reserved to the states; it follows, that unless an express authority can be found, vesting us with the power. be the evil ever so great, it can only be re-

mediated by the several states, who have never delegated the authority to Congress.

We must legislate upon facts, not on surmises: we must have evidence, not vague suspicions, if we mean to legislate with prudence. What facts have been produced? What evidence has been submitted to the House? I have heard, sir, of none; but if evidence of facts could not be procured, at least it might have been expected, that reasonable cause of suspicion should be shown. Here again, gentlemen are at fault: they cannot even show a suspicion why aliens ought to be suspected. We have, indeed, been told, that the fate of Venice, Switzerland and Batavia, was produced by the interference of foreigners. But the instances are unfortunate; because all those powers have been overcome by foreign force, or divided by domestic faction, not by the influence of aliens who resided among them; and if any instruction is to be gained from the history of those republics, it is, that we ought to banish, not aliens, but all those citizens who do not approve the executive acts. This doctrine, I believe, gentlemen are not ready to avow; but if this measure prevails, I shall not think the other remote. If it has been proved, that these governments were destroyed by the conspiracies of aliens, it yet remains to be shown, that we are in the same situation: or that any such plots have been detected, or are even reasonably suspected here. Nothing of this kind has yet been done. A modern Theseus, indeed, has told us, that he has procured a clue, that will enable him to penetrate the labyrinth and destroy this monster of sedition. Who the fair Ariadne is, who kindly gave him the ball, he has not revealed; nor, though several days have elapsed since he undertook the adventure, has he yet told us where the monster lurks. No evidence then being produced, we have a right to say, that none exists, and yet we are about to sanction a most important act, and on what grounds?—Our individual suspicions, our private fears, our overheated

imagination. Seeing nothing to excite these suspicions, and not feeling those fears, I cannot give my assent to the bill, even if I did not feel a superior obligation to reject it on other grounds.

The first section provides, that it shall be lawful for the President "to order all such aliens, as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the United States, in such time as shall be expressed in such order."

Our government, sir, is founded on the establishment of those principles, which constitute the difference between a free constitution and a despotic power; a distribution of the legislative, executive and judiciary powers into several hands; a distribution strongly marked in the three first and great divisions of the constitution. By the first, all legislative power is given to Congress; the second vests all executive functions in the President, and the third declares, that the judiciary powers shall be exercised by the supreme and inferior courts. Here then is a division of the governmental powers strongly marked, decisively pronounced, and every act of one or all of the branches, that tends to confound these powers, or alter their arrangement, must be destructive of the constitution. Examine then, sir, the bill on your table, and declare, whether the few lines, I have repeated from the first section, do not confound these fundamental powers of government, vest them all, in more unqualified terms, in one hand, and thus subvert the basis on which our liberties rest.

Legislative power prescribes the rule of action; the judiciary applies the general rule to particular cases, and it is the province of the executive to see, that the laws are carried into full effect. In all free governments, these powers are exercised by different men, and their union in the same hand is the peculiar

characteristic of despotism. If the same power, that makes the law, can construe it to suit his interest, and apply it to gratify his vengeance; if he can go further, and execute, according to his own passions, the judgment which he himself has pronounced upon his own construction of laws which he alone has made, what other features are wanted to complete the picture of tyranny? Yet all this, and more, is proposed to be done by this act: by it the President alone is empowered to make the law, to fix in his mind, what acts, what words, thoughts or looks, shall constitute the crime contemplated by the bill. He is not only authorized to make this law for his own conduct, but to vary it at pleasure, as every gust of passion, every cloud of suspicion shall agitate or darken his mind. The same power, that formed the law, then applies it to the guilty or innocent victim, whom his own suspicions, or the secret whisper of a spy, have designated as its object. The President then having construed and applied it, the same President is by the bill authorized to execute his sentence, in case of disobedience, by imprisonment during his pleasure. This then comes completely within the definition of despotism; an union of legislative, executive and judicial powers. But this bill, sir, does not stop here; its provisions are a refinement upon despotism, and present an image of the most fearful tyranny. Even in despotisms, though the monarch legislates, judges and executes, yet he legislates openly; his laws, though oppressive, are known, they precede the offence, and every man, who chooses, may avoid the penalties of disobedience. Yet he judges and executes by proxy, and his private interests or passions do not inflame the mind of his deputy.

But here the law is so closely concealed in the same mind that gave it birth—the crime is “exciting the suspicions of the President”—that no man can tell what conduct will avoid that suspicion: a careless word, perhaps misrepresented or never spoken, may be sufficient evidence, a look may destroy, an idle ges-

ture may ensure punishment; no innocence can protect, no circumspection can avoid the jealousy of suspicion. Surrounded by spies, informers and all that infamous herd which fatten under laws like this, the unfortunate stranger will never know either of the law of accusation or of the judgment, until the moment it is put in execution: he will detest your tyranny, and fly from a land of delators, inquisitors and spies. This, sir, is a refinement upon the detestable contrivance of the decemvirs. They hung the tables of their laws so high, that few could read them; a tall man, however, might reach—a short one might climb and learn their contents; but here the law is equally inaccessible to high and low, safely concealed in the breast of its author; no industry or caution can penetrate this recess and attain a knowledge of its provisions, nor even if they could, as the rule is not permanent, would it at all avail.

Having shown, that this bill is at war with the fundamental principles of our government, I might stop here in the certain hope of its rejection. But I can do more; unless we are resolved to pervert the meaning of terms, I can show, that the constitution has endeavored to "make its surety doubly sure, and take a bond of fate," by several express prohibitions of measures like the one you now contemplate. One of these is contained in the ninth section of the first article; it is at the head of the articles which restrict the powers of Congress, and declares, "that the emigration or importation of such persons as any of the states shall think proper to admit, shall not be prohibited prior to the year 1808." Now, sir, where is the difference between a power to prevent the arrival of aliens and a power to send them away as soon as they arrive? To me they appear precisely the same. The constitution expressly says, that Congress shall not do this; and yet Congress are about to delegate this prohibited power and say the President may exercise it. as his pleasure may direct.

Judiciary power is taken from courts, and given to the executive; the previous safeguard of a presentment by a grand inquest, is removed: the trial by jury is abolished; the "public trial," required by the constitution, is changed into a secret and worse than inquisitorial tribunal. Instead of giving "information on the nature and cause of the accusation," the criminal, alike ignorant of his offence, and the danger to which he is exposed, never hears of either, until the judgment is passed and the sentence is executed. Instead of being "confronted with his accusers," he is kept alike ignorant of their names and their existence; and the forms of a trial being dispensed with, it would be a mockery, to talk of "process for witness," or the "assistance of counsel for defence." Thus are all the barriers, which the wisdom and humanity of our country has placed between accused innocence and oppressive power, at once forced and broken down. Not a vestige even of their form remains. No indictments, no jury, no trial, no public procedure, no statement of the accusation, no examination of the witnesses in its support, no counsel for defence: all is darkness, silence, mystery and suspicion. But, as if this were not enough, the unfortunate victims of this law are told, in the next section, that, if they can convince the President that his suspicions are unfounded, he may, if he pleases, give them a license to stay. But how can they remove his suspicions, when they know not on what act they were founded? How take proof to convince him, when he is not bound to furnish that on which he proceeds? Miserable mockery of justice! Appoint an arbitrary judge, armed with legislative and executive powers added to his own! Let him condemn the unheard, the unaccused object of his suspicions, and then to cover the injustice of the scene, gravely tell him, you ought not to complain, you need only disprove facts you have never heard, remove suspicions that have never been communicated to you; it will be easy to convince your judge, whom you shall not approach.

that he is tyrannical and unjust, and when you have done this, we give him the power, he had before, to pardon you if he pleases!

So obviously do the constitutional objections present themselves, that their existence cannot be denied, and two wretched subterfuges are resorted to, to remove them out of sight. In the first place, it is said, the bill does not contemplate the punishment of any crime, and therefore the provisions in the constitution, relative to criminal proceedings and judiciary powers, do not apply. But have the gentlemen, who reason thus, read the bill, or is every thing forgotten, in our zealous hurry to pass it? What are the offences upon which it is to operate? Not only the offence of being "suspected of being dangerous to the peace and safety of the United States," but also that of being "concerned in any treasonable or secret machinations against the government thereof"—and this, we are told, is no crime. A treasonable machination against the government, is not the subject of criminal jurisprudence! Good heaven! to what absurdities does not an over zealous attachment to particular measures lead us! In order to punish a particular act, we are forced to say, that treason is no crime, and plotting against our government is no offence! And to support this fine hypothesis, we are obliged to plunge deeper into absurdity, and say, that the acts, spoken of in the bill, are no crimes, and therefore the penalty, contained in it, is not a punishment, but merely a prevention; that is to say, we invite strangers to come amongst us; we declare solemnly, that government shall not prevent them; we entice them over by the delusive prospects of advantage; in many parts of the union we permit them to hold lands, and give them other advantages while they are waiting for the period at which we have promised them a full participation of all our rights. An unfortunate stranger, disgusted with tyranny at home, thinks he shall find freedom here; he accepts our conditions; he puts faith in our promises; he vests

his all in our hands : he has dissolved his former connexions and made your country his own : but while he is patiently waiting the expiration of the period that is to crown the work, entitle him to all the rights of a citizen—the tale of a domestic spy, or the calumny of a secret enemy, draws on him the suspicions of the President, and unheard, he is ordered to quit the spot he had selected for his retreat, the country which he had chosen for his own, perhaps the family which was his only consolation in life, he is ordered to retire to a country whose government, irritated by his renunciation of its authority, will receive only to punish him—and all this, we are told, is no punishment !

So manifest do these violations of the constitution appear to me, so futile the arguments in their defence, that they press seriously on my mind and sink it even to despondency. They are so glaring to my understanding, that I have felt it my duty to speak of them in a manner, that may perhaps give offence to men whom I esteem, and who seem to think differently on this subject; none, however, I can assure them, is intended. I have seen measures carried in this House, which I thought militated against the spirit of the constitution; but never before have I been witness to so open, so wanton, so undisguised an attack.

I have now done, sir, with the bill, and come to consider the consequences of its operation. One of the most serious has been anticipated, when I described the blow it would give to the constitution of our country. We should cautiously beware of the first act of violation; habituated to overleap its bounds, we become familiarized to the guilt, and disregard the danger of a second offence; until proceeding from one unauthorized act to another, we at length throw off all restraint which our constitution has imposed; and very soon not even the semblance of its form will remain.

But, if regardless of our duty as citizens, and our solemn obligations as representatives; regardless of the rights of our constituents; regardless of every sanc-

tion, human and divine, we are ready to violate the constitution we have sworn to defend—will the people submit to our unauthorized acts—will the states sanction our usurped power? Sir, they ought not to submit—they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine, that the evil is to stop here; that a few unprotected aliens only are to be affected by this inquisitorial power. The same arguments, which enforce those provisions against aliens, apply with equal strength to enacting them in the case of citizens. The citizen has no other protection for his personal security, that I know, against laws like this, than the humane provisions I have cited from the constitution. But all these apply in common to the citizen and the stranger: all crimes are to be tried by jury: no person shall be held to answer unless on presentment: in all criminal prosecutions, the accused is to have a public trial: the accused is to be informed of the nature of the charge; to be confronted with the witnesses against him; may have process to enforce the appearance of those in his favor, and is to be allowed counsel in his defence. Unless, therefore, we can believe, that treasonable machinations and the other offences, described in the bill, are not crimes, that an alien is not a person, and that one charged with treasonable practices is not accused—unless we can believe all this in contradiction to our understanding, to received opinions and the uniform practice of our courts, we must allow, that all these provisions extend equally to alien and native, and that the citizen has no other security for his personal safety, than is extended to the stranger, who is within his gates. If, therefore, this security is violated in one instance, what pledge have we that it will not be in the other? The same plea of necessity will justify both. Either the offences, described in the act, are crimes, or they are not. If they are, then all the humane provisions of the constitution

forbid this mode of punishing, or preventing them, equally as relates to aliens and citizens. If they are not crimes, the citizen has no more safety by the constitution, than the alien; for all these provisions apply only to crimes. So that in either event, the citizen has the same reason to expect a similar law to the one now before you, which will subject his person to the uncontrolled despotism of a single man. You have already been told of plots and conspiracies; and all the frightful images, that are necessary to keep up the present system of terror and alarm, have been presented to you; but who are implicated by these dark hints—these mysterious allusions? They are our own citizens, sir, not aliens. If there is any necessity for the system now proposed, it is more necessary to be enforced against our own citizens, than against strangers; and I have no doubt, that either in this or some other shape, this will be attempted. I now ask, sir, whether the people of America are prepared for this? Whether they are willing to part with all the means which the wisdom of their ancestors discovered; and their own caution so lately adopted to secure their own persons? Whether they are willing to submit to imprisonment, or exile, whenever suspicion, calumny, or vengeance, shall mark them for ruin? Are they base enough to be prepared for this? No, sir, they will, I repeat it, they will resist this tyrannical system; the people will oppose, the states will not submit to its operations; they ought not to acquiesce, and I pray to God, they never may.

My opinions, sir, on this subject, are explicit, and I wish they may be known; they are, that whenever our laws manifestly infringe the constitution under which they were made, the people ought not to hesitate which they should obey: if we exceed our powers, we become tyrants, and our acts have no effect. Thus, sir, one of the first effects of measures, such as this, if they be acquiesced in, will be disaffection among the states, and opposition among the people to your gov-

ernment; tumults, violations and a recurrence to first revolutionary principles: if they are submitted to, the consequences will be worse. After such manifest violation of the principles of our constitution, the form will not long be sacred; presently every vestige of it will be lost and swallowed up in the gulf of despotism. But should the evil proceed no further than the execution of the present law, what a fearful picture will our country present! The system of espionage thus established, the country will swarm with information spies, delators and all that odious tribe, that breed in the sunshine of despotic power, that suck the blood of the unfortunate, and creep into the bosom of sleeping innocence only to awaken it with a burning wound. The hours of the most unsuspecting confidence; the intimacies of friendship, or the recesses of domestic retirement, afford no security: the companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber, are all tempted to betray your imprudence or guardless follies, to misrepresent your words, to convey them, distorted by calumny, to the secret tribunal where jealousy presides, where fear officiates as accuser, where suspicion is the only evidence that is heard.

These, bad as they are, are not the only ill consequences of these measures. Among them we may reckon the loss of wealth, of population and of commerce. Gentlemen, who support the bill, seemed to be aware of this, when yesterday they introduced a clause to secure the property of those who might be ordered to go off. They should have foreseen the consequences of the steps, which they have been taking: it is now too late to discover, that large sums are drawn from the banks, that a great capital is taken from commerce. It is ridiculous to observe the solicitude they show to retain the wealth of these dangerous men, whose persons they are so eager to get rid of. If they wish to retain it, it must be by giving them security to their persons. and assuring them that while

they respect the laws, the laws will protect them from arbitrary powers ; it must be, in short, by rejecting the bill on your table. I might mention other inferior considerations : but I ought, sir, rather to entreat the pardon of the House, for having touched on this. Compared to the breach of our constitution, and the establishment of arbitrary power, every other topic is trifling ; arguments of convenience sink into nothing ; the preservation of wealth, the increase of commerce, however weighty on other occasions, here lose their importance, when the fundamental principles of freedom are in danger. I am tempted to borrow the impressive language of a foreign speaker, and exclaim—"Perish our commerce, let our constitution live ;" perish our riches, let our freedom live. This, sir, would be the sentiment of every American, were the alternative between submission and wealth : but here, sir, it is proposed to destroy our wealth in order to ruin our commerce : not in order to preserve our constitution, but to break it—not to secure our freedom, but to abandon it.

I have now done, sir, but before I sit down, let me entreat gentlemen seriously to reflect, before they pronounce the decisive vote, that gives the first open stab to the principles of our government. Our mistaken zeal, like the patriarch of old, has bound one victim ; it lies at the foot of the altar ; a sacrifice of the first born offspring of freedom is proposed by those who gave it birth. The hand is already raised to strike, and nothing I fear, but the voice of heaven, can arrest the impious blow.

Let not gentlemen flatter themselves, that the fervor of the moment can make the people insensible to these aggressions. It is an honest, noble warmth, produced by an indignant sense of injury. It will never, I trust, be extinct, while there is a proper cause to excite it. But the people of America, sir, though watchful against foreign aggressions, are not careless of domestic encroachment ; they are as jealous, sir, of their liberties at home, as of the power and prosperity of

their country abroad; they will awake to a sense of their danger. Do not let us flatter ourselves, then, that these measures will be unobserved or disregarded: do not let us be told, sir, that we excite a fervor against foreign aggressions only to establish tyranny at home; that, like the arch traitor, we cry "Hail Columbia," at the moment we are betraying her to destruction; that we sing out, "happy land," when we are plunging it in ruin and disgrace; and that we are absurd enough to call ourselves "free and enlightened," while we advocate principles, that would have disgraced the age of Gothic barbarity, and establish a code, compared to which the ordeal is wise, and the trial by *battel* is merciful and just.

SPEECH OF ROBERT G. HARPER.

ON THE

CONSTITUTIONAL POWERS OF THE PRESIDENT AND SENATE RELATIVE TO THE APPOINTMENT OF FOREIGN MINISTERS,

**DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, MARCH 2, 1798.**



A Resolution had been introduced, which, among other provisions, proposed to limit to forty thousand dollars, the annual appropriation "for the support of such persons, as the President should commission to serve the United States in foreign parts." An amendment was brought forward, the object of which was to restrict the President in the exercise of the power of appointing Ministers Plenipotentiary. It proposed to limit the number of Ministers to two ; viz. one at London, and one at Paris. The amendment was subsequently modified so as to allow one also at Madrid. In Committee of the whole, Mr. Harper spoke as follows :

It was my wish and my hope, Mr. Chairman, when this business was again called up some days ago, after an intermission of three weeks or more, that we should at length be permitted to come to a decision, without further debate, on a question which had so long occupied the attention of the House, and already perhaps exhausted the patience of the public. I and those, with whom I think on this occasion, were willing, for the sake of an early decision, to pass by unanswered many things, which though susceptible, in our opinion, of an easy refutation, were calculated to make an impression to our disadvantage. We were even content to leave unnoticed the violent philippic of the gentleman from Virginia, (Mr. Nicholas,) who intro-

duced this motion, and who, in support of it, has allowed himself so great a latitude of invective against its opposers and their adherents. We therefore repeatedly called for the question, and did all in our power to close a debate, in which such immoderate use had already been made of the indulgence of the House.

But it did not so seem good to the gentleman from Pennsylvania. (Mr. Gallatin.) He yesterday pronounced a discourse of three hours and a half long, in which he repeated assertions formerly refuted, and made them the ground of a long train of reasoning; and advanced many new positions equally untenable, but equally capable, if left undetected and unexposed, of misleading the mind. These assertions, which the gentleman from Pennsylvania has not attempted to prove, though they are the ground-work of all his reasonings, were advanced with a boldness which nothing but a belief, that he was to remain unanswered, could have produced. His speech, when prepared in his closet, was evidently intended for a concluding speech; and hence he has laid down positions, which he knew to be unfounded, with a boldness of which even he himself has heretofore exhibited no example. On these positions he has built a gigantic structure of argument, to support the present motion; a structure which, like a vast edifice resting on loose blocks must fall and crumble in the dust, as soon as some person shall take the trouble to discover and knock away its frail and temporary props.

It is for this purpose that I now rise, once more to trespass on the indulgence of the committee. The loose blocks, which support this edifice, I mean to knock away; an operation which requires neither strength nor skill, which may be performed by any person who stands near enough to discover the defect: and then it will be seen, with what speedy ruin a structure so large, and appearing so solid, when viewed from a distance, will tumble to the earth.

[Here Mr. Harper made some observations, which.

as they were not immediately connected with the subject of discussion, are omitted.]

That gentleman, (Mr. Gallatin,) prefaced his observations by declaring, that the amendment under consideration went no further than to reduce the salaries of certain ministers plenipotentiary, from nine thousand to four thousand, five hundred dollars; but unfortunately, he forgot his tenet before he arrived at the middle of his speech: for he soon confessed, that the object of the amendment was to restrain and control the executive in the exercise of the power of appointing foreign ministers, which is vested in it by the constitution; and having made this acknowledgment, so contradictory to his first position, the gentleman from Pennsylvania proceeded to show, by the utmost exertion of his powers, that it was right and proper for the House thus to interfere, thus to control the executive, and to use its power over appropriations for effecting that purpose. Indeed the gentleman from Virginia, (Mr. Nicholas,) at the outset of the business, expressly stated this to be the sole object of his amendment. With a candor and openness, characteristic of his usual conduct, he avowed that his object was not to save money, but to restrict the President in the exercise of this power. He told us, that the diplomatic corps had been improperly increased; that the number of ministers had been improperly extended; that there was danger of a further extension, by which a dangerous executive influence in the House was likely to be produced; and that it was right for the House to interfere, prevent this extension, and bring back the establishment to its original limits; and this he stated to be the object of his amendment. Hence then, Mr. Chairman, it is manifest, not only from the arguments of the gentleman from Pennsylvania, but from the express declaration of the mover of this amendment himself, that the question now agitated is a question of power, and not a question of money. It is manifestly not a question to know whether a minister plenipoteu-

tiary shall have this, that, or the other salary, but whether this House shall direct the President where he shall appoint ministers plenipotentiary, where ministers resident, and where no ministers at all. The question goes this whole length; for if the House can say, as the amendment declares it can and ought, that no minister plenipotentiary is necessary at Lisbon or Berlin, it can say with the same propriety and on the same principles, that no minister plenipotentiary is necessary at London, Paris, or Madrid, or that no minister is necessary any where.

That such is the object of the amendment, that the question between us is a question of power, and not of money, is further evident, from the mode of argument by which the amendment is supported. Gentlemen do not pretend that nine thousand dollars is too much for a minister plenipotentiary at Lisbon or Berlin; on that ground we should cheerfully meet them, and agree to a reduction of the salary, if it should appear to be too high: but they tell us, and attempt to prove, that there is no need of a minister plenipotentiary at Lisbon or Berlin. In answer, we allege, that by the constitution, the President and senate are solely authorized to judge where ministers of this, that, or the other grade ought to be employed, and that this House has nothing to do with the business, but fix their salaries, which it is bound to do in a suitable manner. This gentlemen deny; and thus the question of power, the sole question which has been agitated, or is considered as of any importance, arises between us.

I say, "the only question which is considered as important;" because the supporters of the amendment have laid no stress whatsoever on the question of expense. They have, on the contrary, shown themselves ready to abandon it, for the sake of gaining the least additional chance of support in the great question; the question of power. This is manifest from the motion of the gentleman from Maryland, (Mr. S. Smith,) which was immediately agreed to by the mover of the amend-

ment. By the amendment, as first proposed, ministers plenipotentiary were to be allowed only at London and Paris. The gentleman from Maryland proposed to allow one at Madrid also, because he had observed that the impropriety of recalling our minister from that court had been particularly insisted on, by some who opposed the amendment. The gentleman from Virginia immediately consented to modify his amendment, so as to leave a minister plenipotentiary at Madrid. From which it would appear most evidently, if we did not know it before, that gentlemen care not how many ministers plenipotentiary there are, nor how much money is spent in maintaining them, provided the House of Representatives can obtain the power of controlling and directing the appointment. It is to obtain this power, and not to save public money, that gentlemen struggle; and provided the principle can but be established, they are content to have ministers plenipotentiary as many as any body pleases; for they know that the principle may be as completely established in the case of one minister, as by turning out the whole diplomatic corps.

And notwithstanding all this, the gentleman from Pennsylvania (Mr. Gallatin,) tells us, that this is merely a question about salaries, a question of saving nine thousand dollars, and wonders how it could lead to a controversy, about the constitutional powers of the President and the House! This proves that the gentleman from Pennsylvania intended his speech for a concluding speech; or that he entertains a most contemptuous opinion of the understanding of the House.

I shall therefore, Mr. Chairman, consider this amendment as having for its object, and its sole object too, the establishment of this principle: "that the House of Representatives, by its power over appropriations, has a right to control and direct the executive, in the appointment of foreign ministers." I shall treat the question, which arises upon this amendment, as a question of power, between this House and the President

and senate, and I shall endeavor to show that the amendment, if carried, would be a direct breach of the constitution, an alarming usurpation by this branch, on the constitutional powers of the executive department.

The supporters of this amendment, avowing its object to be the establishment of a control over the appointment of foreign ministers, contend that this House have a right to exercise that control, and rely on that part of the constitution which provides, that "no money shall be issued from the treasury without an appropriation by law." As this House, say gentlemen, must concur in passing all laws, it follows that it may refuse its assent to appropriations. In judging whether it will give or refuse this assent, it must be guided solely by its own discretion, by its own opinion about the necessity or utility of the object, for which an appropriation is wanted. If it should think this object unnecessary, or hurtful, it is bound in duty to withhold the appropriation. Consequently, it may refuse to appropriate for a minister to Lisbon, Berlin, or any other place, if it should think such minister, though appointed by the President and senate, unnecessary or injurious. This I take to be a fair state of the argument.

But gentlemen, while they lay such stress upon this part of the constitution, seem entirely to forget another part, that part which provides, that the "President, by and with the advice and consent of the senate, shall appoint foreign ministers and consuls." It will, however, be admitted, that these two parts of the constitution are equally authoritative, and must both have effect; that the whole instrument, like all other instruments, must be taken together, and so construed, that none of its provisions may be defeated or rendered nugatory. These two powers, therefore, the power of appointment in the President and senate, and the power of appropriation in the House, must be reconciled to each other; must be made to act as mutual helps,

not as mutual obstructions. How is this to be done? Certainly not by admitting the doctrine of this amendment, which would utterly destroy one of the powers; would give the House an absolute control over the appointment of ministers, and reduce the President and senate to the mere power of making a nomination, which the House might refuse to agree to according to its good pleasure. This is the plain and necessary consequence of admitting the principle contended for in support of this amendment, that the House, when called on to appropriate for an officer, legally appointed, may in the first place inquire, whether the appointment is necessary.

Some other way of reconciling these powers must therefore be found out; and what is it? We contend, Mr. Chairman, that it is thus. An office must first be authorized by law: for nobody pretends that the President and senate can create offices. When the office is thus authorized, the President and senate exercise their power of appointment, and fill the office. The House of Representatives then exercises its constitutional power over appropriations, by providing an adequate compensation for the officer. In the exercise of this power they cannot inquire, whether the office was necessary or not; for that has already been determined by the law which authorized it. Neither can they inquire whether the office was properly filled; for that would be to invade the powers of the President and senate, to whom, by the constitution, the right of choosing the officer is exclusively referred. Into what then may they inquire? They may inquire what is a proper and adequate compensation for such an officer: they may fix the amount of his salary; and in fixing it they must be guided by a proper discretion, by a sense of duty, by the nature of the office, the circumstances of the country, and the public service. Thus the constitution would be reconciled, and each department would act within its proper sphere. The President and senate could make no appointment till

the office should be authorized by law, consequently, there would be no danger of abuse. When they had made the appointment, they could not fix the amount of salary, or order the money to be paid out of the treasury; another guard against the danger of abuse. When the appointment should be duly made, the House, on the other hand, would be bound to provide an adequate salary, and could not, by refusing it, defeat the law and the appointment, because they might think the one unnecessary, or the other unwise; and this principle would be a guard against any abuse of the powers of the House; would prevent it from invading the province of the other departments, and subverting the principles of the constitution.

Had gentlemen confined themselves within these limits, had they carried their inquiries no further than to the adequacy of this or that salary, this debate would never have existed. We should have met them on the ground of sufficiency of salaries, without any reference to constitutional points, or contention about constitutional powers. But this was not their conduct. They expressly declared, not that the salaries were too high and ought to be reduced, but that the appointments themselves were unnecessary, and ought to be abridged; and thus they drove us into the constitutional question, and compelled us to defend the executive powers, against their attacks in this House.

But, say gentlemen, is the House always bound to appropriate? If the President should appoint an hundred ministers plenipotentiary, must the House without inquiry give money to support them all? What guard would there then be, they exclaim, against an enormous and abusive extension of the diplomatic establishment?

To this I answer, Mr. Chairman, in the first place, that we have a security in the responsibility of the President. He is elected by the people; and elected every four years. All these appointments, though sanctioned by the senate, must originate with him;

and therefore he is particularly and almost solely responsible. His character is at stake. He is a single actor, on a most conspicuous theatre; and all eyes are upon him. He is watched with all the jealousy, which, in this country, particularly, is entertained of executive power. He is watched by the gentlemen themselves who support this amendment, and who are sufficiently prone to find fault with him and abuse him, even when he acts properly. This he well knows, and consequently will take care to do nothing which may strengthen their hands, by giving them grounds for censure. Should he act improperly, make foolish or unnecessary appointments, he must disgust his friends and supporters, forfeit the public esteem, and lose his election. He may be even turned out by impeachment, before the time for a new election arrives. These I apprehend are sufficient securities against wanton misconduct.

I answer, in the next place, that if the President should think fit to abuse his powers, it is his own concern, and no business of this House; unless, indeed, we choose to impeach him. We are sent here by the people to exercise our own powers, and not to watch over the President; who equally with us derives his powers from the people, and is amenable to them and not to this House, for the exercise of those powers. We may, indeed, as individuals, censure his conduct, as we may that of any member on this floor, and endeavor to prevent the people from re-electing him; but as a body, we have nothing to do with him, or his conduct, but to impeach him. If he proposes measures to us which we do not approve, we may reject them, in the same manner as he may reject bills which we send up to him; but we have no more right to prevent him, either directly or indirectly, from making such appointments as he pleases, than he has to prevent us from passing such votes or resolutions as we please. The interference in one case is equally unconstitutional as in the other. It has indeed become fashionable,

with some gentlemen on this floor, to consider this House as "the people," and to speak and act as if the people had delegated to us, their general superintending power over the other departments; but this doctrine is unknown to the constitution, to the utter subversion of which it directly leads. It directly leads to that concentration of powers in one popular body, which it was the main object of the constitution to prevent, and which it was and is the main object of those gentlemen to introduce: that concentration to which this amendment is considered and intended, by its supporters, as an introductory step.

I answer, in the last place, Mr. Chairman, that if the President should appoint an hundred ministers plenipotentiary, or commit any other such wanton and foolish abuse of his power, it would be an extreme case which would speak for itself, and dictate the line of conduct which this House and the country ought to pursue. But we never can legislate on extreme cases. They must be left to suggest and provide their own remedies, when they occur. Suppose two thirds of both Houses, under the influence of some unaccountable madness, should pass a law in spite of the President, for building fifty ships of the line, to be given to France in order to augment her navy, or for any other violent purpose, how ought the President and the country to act? I do not know: these would be extreme cases, and they would carry their own evidence, and the indication of their own remedies, with them. We may as well suppose extreme cases of one kind as of another; and however our own self-love may induce us to think, that there is less danger from us than from the President and senate, and that power, however dangerous in their hands, is perfectly safe as soon as it comes into ours, the constitution and the framers of it judged otherwise, and they judged rightly. It is infinitely more dangerous in our hands, when uncontrolled; because we have less personal responsibility, and are far more liable to the influence of passion.

When, therefore, these extreme cases occur, we will act accordingly; and should they obviously require the breach of a law, the necessity will be universally felt and acknowledged, and we must break it. All that I contend for is, that the present is not an extreme case; and that these appointments being authorized by law, a law must be broken before we can defeat the appointments, according to the avowed object of this amendment. I contend that when we undertake to defeat these appointments, we must consider them as authorized by law, as much as the appointment of a judge, or a secretary of the treasury; and must inquire whether the motives are sufficiently urgent, the case sufficiently extreme, to induce the necessity of breaking a law. This is denied by gentlemen who support the amendment. They contend that these appointments of foreign ministers are not to be considered, as completely authorized by law; and consequently that the House may withhold the appropriation, without breaking any law. This is the very point in dispute; and to this point I shall direct such remaining observations, as seem necessary to be made on the constitutional question.

The question then is, Mr. Chairman, from what source is the office of minister plenipotentiary, or any other foreign minister, derived? The officer, we well know, must be appointed by the President and senate; but the office and the officer are distinct things; and before an officer can be appointed, an office must exist; unless gentlemen are disposed to admit, as I certainly am not, that the President and senate can create offices. The gentleman from Pennsylvania, (Mr. Gallatin,) well aware that if the office of foreign minister could be considered as legally existing, previous to the appointment by the President and senate, and independently of it, the conclusion which we contend for would irresistibly follow, has denied this position; he has denied that the office of foreign minister becomes a

complete and legal office, as soon as the officer is appointed by the President and senate.

[Mr. Gallatin explained. He had asserted, he said, the very contrary; and had admitted, though he considered it as a disputable point, that the office was like that of a judge, and became complete on the appointment by the President. But he had denied that the House was bound to appropriate for the officer. Mr. Harper continued.]

I know, Mr. Chairman, what the gentleman denied, and what he admitted; and it appears by his explanation, that I was right in my first statement. The gentleman contended, and that was the leading point of his argument, that the office of foreign minister was derived from the appointment of the President. And why did he contend for this? Because he knows that the President cannot erect offices; and consequently, if the office of foreign minister had no other origin than the appointment of the President, it could not be considered as a legally existing and complete office, until this House had concurred in it. This was the scope and object of the gentleman's argument, and hence his solicitude to establish the position, that the office of foreign minister originates in the appointment of the President. He said, indeed, that he would admit these offices to be analogous to those of judges; but he immediately denied it again, by denying that the House was bound by any law to appropriate for these offices, as they evidently are for judges; and in denying this, he denied every thing. The gentleman admitted in form, but denied in substance, and contended for principles directly at war with his seeming admission. These are complete offices according to the gentleman, but they are derived from no legal authority, nor is the House bound by any law to appropriate for their support. That is, they are legal and they are not legal; they are offices and they are not offices; and this is the amount of the gentleman's admission, and of his explanation.

Thus he told the House, on a former occasion, that he did not dispute the power of the President and senate to make treaties; he only contended that those treaties, when made, were not binding, till the House had concurred in them by granting appropriations: in other words, that the President and senate could make treaties, which, however, though made were in fact not treaties, till ratified by the House; that is, that there might be treaties which were not treaties. This was the substance and amount of that gentleman's reasoning on a former occasion, and it exceedingly resembles his present argument, as just now explained by himself.

The question, therefore, between the gentleman from Pennsylvania and us, is, whether the office of foreign minister be derived from the appointment of the President and senate, concurred in by this House; or must be traced to a higher origin, and considered as completely existing before the appointment takes place; in the same manner as the office of secretary of the treasury, or of state, which completely existed as soon as the law passed establishing those departments, and before any officer was appointed. We contend for the latter doctrine, and the gentleman from Pennsylvania for the former. If he be right, it follows, that the appointment is incomplete until this House gives its sanction; for we well know that the President and senate cannot of themselves create an office. If we be right, it follows, that as soon as an appointment is made to fill this office, this House is legally bound to supply an adequate salary, in the same manner as for any other office created by law.

There are two modes, Mr. Chairman, by which an office may exist, either by law or by the constitution; and from one or the other of these sources, the office of foreign minister must be derived. It is not derived from the constitution, like the office of President, vice-president, or speaker of the House; for the constitution speaks of it as already in existence. The con-

stitution does not say there shall be foreign ministers, and then go on to direct how they shall be appointed, as in the case of President; but considering the office as already existing, it merely directs how it shall be filled. "The President," it says, "by and with the advice and consent of the senate, shall appoint foreign ministers and consuls." Unless, then, gentlemen are disposed to deny that there were foreign ministers previous to the constitution, they cannot contend that the office of foreign minister is derived from the constitution. It must, therefore, be derived from the law.

But from what law? Not from any act of Congress; for we know that there is no such act. Congress has never done any thing more than to fix salaries for foreign ministers, and vote money to pay them: and besides, the constitution, which is previous to all acts of Congress, recognizes the office of foreign minister as already existing, and directs in what manner the appointments to fill it shall be made. From what law, then, is this office derived? Mr. Chairman, it is derived from the law of nations.

In every civilized state there are two sorts of law, derived from two distinct sources; the municipal law, and the law of nations. The law of nations, deriving its origin and its force from the consent of nations themselves, mutually given to each other, is independent of their municipal laws, which have relation to their own internal affairs, and depend upon the acts of their respective governments. The municipal laws of the United States consist in our acts of Congress, and are derived from the authority given by the constitution. The law of nations, as it respects us, has a higher origin, and became binding on us from the moment when we erected ourselves into an independent state, and entered into the pale of civilized nations. We then gave our consent to that law, when we began to send and receive ambassadors, and to form treaties with other powers. This law then became binding on us, by our own consent and our own acts; and this law

establishes the office, regulates the duties, and defines the privileges of foreign ministers. That office, consequently, was established among us, as soon as we submitted ourselves to the law of nations. Accordingly, we had foreign ministers before we had a President, before we had a Congress, and before we had a constitution. Even before the first articles of confederation were entered into, we considered this office as existing; for those articles do not establish the office, but merely declare how it shall be filled, by whom foreign ministers shall be sent, by whom they shall be appointed.

The gentleman from Pennsylvania, indeed, has told us, that the office of foreign minister originated in the appointment of the President and senate. But where did that gentleman learn, that the President and senate can create or originate offices? He has said, that the office becomes complete, when sanctioned by an appropriation in this House. But all offices, not existing by the constitution, must be created by law: and where did he learn that this House could concur in a law, by any other means than having a bill before them, and passing it with the usual forms? Where did he learn that this House could, in this indirect way, by voting a sum of money, legalize an act not otherwise legal, and give the force of a law to what otherwise would not be a law? The gentleman has neither learned this in the constitution, nor in the proceedings of the House; but though we know not where he learned it, we are well apprized of the purposes for which he introduced it here. That purpose I have already explained.

It being manifest, then, Mr. Chairman, that the office of foreign minister is established by the law of nations, it only remains to inquire whether that law is complete and binding. Can there be a doubt that it is so, within its proper sphere? Do not our courts of justice acknowledge its existence, and yield to its authority on all objects on which it is calculated to act?

Is any aid required from acts of Congress, or other municipal laws, in order to give it efficacy? Certainly not. These two kinds of laws, the law of nations and the municipal law, are each supreme in their respective spheres. They operate, indeed, upon different objects, and are executed in different modes; but each is complete in its operation. From hence it results, that an office existing by the law of nations has an existence as completely legal, as one which exists by act of Congress: that the office of foreign minister is as much a legal office, exists as much by the laws of this country, as the office of chief justice, or secretary of state: and that, when one of these offices is filled by the appointment of the President and senate, the House is under as complete a legal obligation to provide an adequate salary for it, as for the other. This House can no more say, this, that, or the other minister plenipotentiary is unnecessary, and we will not provide for him, than it can say, a chief justice or a secretary of state is unnecessary, and we will not provide for him. It would as much be guilty of a violation of law in one case, as in the other.

But, Mr. Chairman, if these conclusions, and the premises on which they are founded, should be erroneous, if the doctrines of the gentleman from Pennsylvania should be correct, still this amendment cannot be supported. It is in direct contradiction with the principles on which its supporters rely, and is refuted by the very arguments adduced to defend it.

What is the doctrine of the gentleman from Pennsylvania? That the office of foreign minister originates with the appointment of the President, and becomes completely established when this House has sanctioned it by an appropriation. I state this to be his doctrine, though he did not lay it down in these express words. This is the substance; for otherwise he must admit, in direct contradiction to his whole argument, that the office not only originates as he says, but also becomes complete, by the appointment of the

President and senate: in other words, that the President and senate can create offices. When the gentleman from Pennsylvania, therefore, told us, that although the office of foreign minister originates with the appointment of the President and senate, yet the House is not bound to appropriate a proper salary, as he admits it to be bound in case of an office erected by law; the office of chief justice; for instance, he told us in substance that this office, though originating with the appointment of the President and senate, remained *inchoate*, did not become a complete and legal office, till sanctioned by an appropriation in this House. This, Mr. Chairman, is the true doctrine of the gentleman from Pennsylvania; and it is precisely analogous to his doctrine of *inchoate* treaties, about which we heard so much on a former occasion. His doctrine about treaties was this; that a treaty, though made by the President and senate, is but an *inchoate* act, till completed by the assent and sanction of this House. The House, he said, was in nowise bound to give this assent; but when it should be given, the treaty would then become complete. Accordingly, after this House had assented to the British treaty, by passing an appropriation for carrying it into effect, that gentleman told us that the treaty was complete, and had become as much the act of this House as of the President and senate. This position he has repeated more than once; and in the debates on the President's speech, during the summer session, he laid it down in the most emphatic manner. I presume, Mr. Chairman, that an *inchoate* office is like an *inchoate* treaty, and may become perfect in the same manner. The gentleman admits, nay, contends, that what he calls an *inchoate* treaty becomes perfect and binding, to all intents and purposes, on this House and every body else, as soon as the House gives its sanction by an appropriation. Hence it irresistibly follows, that this *inchoate* office of foreign minister, this office originating, according to the gentleman from Pennsylvania, in the ap-

pointment of the President and senate, but not binding on the House, and therefore not complete, must become complete and binding, from the moment when it receives the sanction of the House. If not, it never can be complete and binding; must always remain an *inchoate* thing, which would be a most manifest absurdity.

If, therefore, the sanction of the House can legalize and complete that office of foreign minister, which originates in the appointment of the President, this sanction has already been given, and these offices of minister plenipotentiary to Lisbon and Berlin, which it is the object of this amendment to destroy, have already been legalized and completed by the assent of this House. They are consequently, at this time, according to the principles of gentlemen themselves, completely legal offices; as much so as those of President, chief justice, or secretary of state; and these gentlemen, in attempting to destroy them, by withholding an appropriation, are guilty of as direct and as great an infraction of the law and the constitution, as if they were to attempt to drive the President of the United States from his office, by refusing the annual appropriation for payment of his salary. An office must either be legal or not legal. If legal, it is equally binding, in whatever mode it became so, whether by the law of nations, an act of Congress, or the appointment of the President and senate, sanctioned by this House; and there exists the same obligation on the House to provide an adequate salary, in one case as in the other.

Will gentlemen ask when these offices of minister plenipotentiary to Lisbon and Berlin, received the sanction of this House? Lest they should have forgotten, I will tell them. The first received it in May, 1796, and the second from this present Congress, in June, 1797. It will appear by a reference to the files of the House, that on the 28th of May, 1796, the President of the United States sent a message to the House,

informing it that he had appointed ministers plenipotentiary to Madrid and Lisbon, instead of ministers resident; and that this augmentation of the grade would require an additional appropriation. In consequence of this message, a bill was passed on the fifth of June following, by which the necessary appropriation was made. Thus the office of minister plenipotentiary to Lisbon received the express sanction of this House.

Surely we cannot have forgotten what passed in this House last June, during the first session of this Congress. We were informed by the estimates from the department of state, that thirteen thousand, five hundred dollars would be wanted, for the salary and outfit of a minister plenipotentiary to Berlin. A bill was brought in, containing this appropriation. The appropriation was opposed; but after full discussion it was carried by a great majority, and the bill passed. Thus the office of minister plenipotentiary to Berlin received the express sanction of this present House of Representatives.

If these offices, therefore, were *inchoate* before, according to the doctrine of the gentleman from Pennsylvania, they became complete, on his own principles, as soon as these appropriations were consented to by this House; for he has told us over and over that an *inchoate* treaty becomes complete, as soon as this House gives its assent by an act of appropriation; and, by the whole tenor and the very terms of his argument, he places an *inchoate* treaty and an *inchoate* office on the same footing. Consequently, he is now bound to appropriate for this office, as much as he admits himself to be bound to appropriate any sums which may still be wanted, for carrying into effect a treaty once sanctioned by this House. And yet that gentleman, and those who agree with him on the present occasion, are content, for the sake of effecting their favorite object, the establishment of a control over executive appointments, to act in direct opposition

to their own principles, in manifest inconsistency with those very doctrines, for which on former occasions they have so strenuously contended! The truth is, that they shape their doctrines to the purposes of the moment, and abandon them without difficulty, when those purposes require it. When they had resolved to defeat the British treaty in this House, they introduced the doctrine of *inchoate*. They alleged that the House was under no obligation to carry a treaty into effect, because it was only an *inchoate* act, till sanctioned by this House; but they admitted, in the most explicit manner, and made it a part of their doctrine of *inchoate*, that when this House had given its sanction, the treaty became complete and obligatory. Now that their object is to turn certain ministers plenipotentiary out of office, and to establish a precedent of the control of this House over the executive, in the exercise of its constitutional functions, they discard their favorite doctrine of *inchoate*, which is no longer adequate to the purpose. They go further, and contend that the House, by its power over appropriations, has a right to control all the acts, to stop all the movements of the other departments: that it may withhold appropriations, in all cases, according to its own good pleasure or caprice, which the gentlemen dignify with the name of discretion. There cannot be a doubt that the doctrine now contended for, would enable this House to drive the secretaries, the judges, and even the President from office, by withholding the appropriation for their salaries, if ever they should become personally obnoxious to a majority of this House. The step from the present doctrines to that point would be far shorter, than from *inchoate* to the present doctrines: and the right of encroachment being once established, there will be nothing to set bounds to it, but the good pleasure of the House. I have heard it avowed, Mr. Chairman, that the affairs of this country can never prosper, until all the present heads of departments shall be driven from office; and I have no doubt that the means of

effecting that purpose, so desirable to these gentlemen, are intended to be furnished by this amendment. Should it prevail, it will establish a precedent, that may easily be extended to that or any other object; and have we reason to believe, from what we now see and have witnessed on former occasions, that the extension will not be attempted?

Lét not gentlemen, therefore, Mr. Chairman, accuse us of too much jealousy, when we zealously oppose these attempts, and charge them with supporting principles which lead to the utter overthrow of the constitution. I view their principles in that light; and in this view I am fully confirmed by the most mature reflection, not only on the consequences of those principles, but on the manner in which they have been introduced and supported here.

But, say gentlemen, what interest can we have to subvert the constitution? Why should we harbor designs of overthrowing the government, and introducing anarchy and confusion? Have we not as much at stake, as much to lose, as you? Have we not equally concurred in the establishment of this government? And what inducement can we have to wish for its destruction?

Since gentlemen, Mr. Chairman, make this appeal to their motives, I must be permitted to offer a few observations on that subject, before I dilate, as it is my intention to do, on the object and tendency of their political system.

As to motives, Mr. Chairman, I have no difficulty in declaring, that I believe the far greater part of these gentlemen to be actuated by the purest motives. I do not say all, because I am not bound to answer for the motives of all. There are some among them, of whose motives I know nothing; but far the greater part of those who support the system, of which this amendment is a leading member, are actuated, in my opinion, by motives as pure, I will not say as my own, because perhaps those gentlemen may deny me the merit of

pure motives, but as those of the best and purest men in this country : and if I could find security against the consequences of men's actions, in the uprightness of their intentions, I never should apprehend harm from these gentlemen. But, Mr. Chairman, does history, experience, or common sense inform us, that such security can be found ? Do we not confine lunatics, and keep knives and razors out of the hands of children ? Why ? Not because we are afraid of their intentions, but of their actions : because we are justly apprehensive of their doing mischief, without intending it.

Does not history teach us that there is nothing more common, than for men to do mischief when they mean to do good ? Did the La Fayettees, the Rochesancalds, the Liancours, the Lameths, and the Clermonts of France, when they first taught the doctrines of insurrection, and stirred up the mob to resist the government, intend to pull down ruin on their country, their families and themselves ? Did they intend to procure their own death or banishment, and the confiscation of their estates ; to send to the guillotine hundreds of thousands of the best of citizens, including their own families and friends ; to drench the whole country in blood, and transfer the most absolute power into the hands of the vilest of mankind ? Certainly they had no such intentions ; and yet we find that these consequences did result from their measures. France and the world have groaned and are groaning under these consequences ; nor are they less real or less deplorable, because their authors intended to do good and not mischief. Fanatics never, or very rarely indeed, intend to do mischief ; and yet all experience proves, that no description of men are half so mischievous. They rush blindly on, without reflection or hesitation, and aim directly at the accomplishment of their designs, without being delayed or turned aside by any considerations of the result.

With these awful examples before us, shall we trust fanatic men with power, by reason of their upright

motives, or sit regardless of the consequences of their actions, because we are convinced that their intentions are pure? So far otherwise, Mr. Chairman, that, in my opinion, their honesty is an additional reason for dreading them. Of your cool, calculating, political knaves I am never afraid. Such men are not apt to be much trusted; and moreover, they never do mischief, but when there is something to be gained by it. They never do mischief for mischief's sake; and being, for the most part, men of sense and reflection, you may generally convince them that their own interest lies in avoiding mischief. But it is the sincere, the honest fanatic whom I dread, and whom I think myself bound to restrain, as I would confine a maniac. His honesty, his zeal, and his good character, enable him to inspire confidence and gain proselytes. The consciousness of upright intentions renders him as bold as he is blind. He rushes directly forward, without looking to the right hand or the left; pulls down all that stands in his way, regardless on whom it may fall; destroys a country, in order to make it free; inflicts unheard of calamities on the present generation, for the happiness of posterity; and makes experiments on governments and nations, with the calm indifference of an anatomist dissecting the body of a malefactor. These are the men of whom I am afraid, and whom I think it my duty at all times and places to withstand: men whose projects and experiments have brought ruin on other countries, and will bring it on this, unless they are resisted and restrained, by the sober and reflecting part of the community.

After all, Mr. Chairman, I am not much afraid of these men. There was, indeed, a time when their efforts might have been formidable; because that phrensy of revolution which seemed to have been poured out upon the earth like a vial of wrath, which had fallen upon mankind like a plague, did once extend its dreadful influence to this country, where, in a greater or less degree, it infected every description of people, and

made them eager for change and ripe for revolution. But it has passed away never to return. Fortunately, before the disease had risen to its height here, time was given for observing its terrible effects elsewhere; and the American people, profiting by example, and aided by the peculiar happiness of their situation, first resisted and have finally subdued this dreadful malady, the love of revolution.

In this, I repeat again, they have been aided no less by their own happy situation, than by the mournful experience of other countries. For, revolutions, Mr. Chairman, are brought about in all countries, by three descriptions of men, philosophers, jacobins and sans-culottes. They exist in all countries, and accordingly, in all countries are to be found the materials of revolution; but they exist in different proportions, and according as these proportions are greater or less in any country, so is the danger of revolution with which it is threatened.

The philosophers are the pioneers of revolution. They advance always in front, and prepare the way, by preaching infidelity, and weakening the respect of the people for ancient instructions. They are, for the most part, fanatics of virtuous lives, and not unfrequently of specious talents. They have always, according to the expression of an ancient writer, "*Satis eloquentiæ, sapientiæ parum*;" eloquence enough, but very little sense. They declaim with warmth on the miseries of mankind, the abuses of government, and the vices of rulers, all of which they engage to remove, provided their theories should once be adopted. They talk of the perfectibility of man, of the dignity of his nature; and entirely forgetting what he is, declaim perpetually about what he should be. Thus they allure and seduce the visionary, the superficial and the unthinking part of mankind. They are, for the most part, honest, always zealous, and always plausible; whereby they become exceedingly formidable. Of the three classes employed in the work of revolution.

they are infinitely the most to be dreaded; for until they have shaken the foundations of order, and infused a spirit of discontent and innovation into the community, neither the jacobins nor the sans-culottes can produce any considerable effect. The army cannot find entrance, until these forerunners have corrupted the garrison, to open the gates. Of these men we, in this country, have enough and more than enough.

Of jacobins we also have plenty. They follow close in the train of the philosophers, and profit by all their labors. This class is composed of that daring, ambitious and unprincipled set of men, who, possessing much courage, considerable talents, but no character, are unable to obtain power, the object of all their designs, by regular means, and therefore perpetually attempt to seize it by violence. Tyrants when in power, and demagogues when out, they lie in wait for every opportunity of seizing on the government *per fas aut nefas*, and for this purpose use all implements which come to their hands, neglect no means which promise success. Unable to enter at the door of the sheepfold, they climb in at the windows, and devour the flock. Although they use the assistance of the philosophers in gaining entrance, they dread their honesty, their zeal and their influence with the public; and accordingly, the first use they make of power, when they can obtain it, is to destroy the philosophers themselves.

As the philosophers are the pioneers, these men are the generals of the army of revolution: but both pioneers and generals are useless without an army: fortunately, the army does not exist in this country.

This army is composed of the sans-culottes; that class of idle, indigent and profligate persons, who so greatly abound in the populous countries of Europe, especially the large towns, and being destitute of every thing, having no home, no families, no regular means of subsistence, feel no attachment to the established order, which they are always ready to join in subverting, when they find any one to pay them for their as-

sistance. These were the men who, in the pay of a wealthy jacobin, and under the guidance of fanatic philosophers, overturned all order and government in France, and will overturn it in every other country, where they exist in great numbers, and are not opposed with great force and unceasing vigilance. But, fortunately for America, there are few sans-culottes among her inhabitants; very few indeed. Except some small portions of rabble in a few towns, the character is unknown among us; and hence our safety. Our people are all, or very nearly all, proprietors of land, spread over a vast extent of country, where they live in ease and freedom, strangers alike to oppression and want. Those who reside in the largest towns are possessed of property, have homes, families and regular occupations; and among such a people, the principles of sans-culottism never did, and never will, make much progress. If a new duke of Orleans were here, with a Mirabeau for his privy-counsellor, and an annual revenue of three hundred thousand guineas to supply the means of corruption, he could not raise a mob sufficient to drive this body from their seats, or overawe their deliberations. We have jacobins in plenty, and philosophers not a few: but while we are free from sans-culottes, and it is probable that the nature of our government, and the abundance of untilled land in our country, will secure us from them for ages, we need not apprehend great danger. We ought, no doubt, to watch and withstand the enterprizes of the pioneers and generals; but while they remain without troops, they are not much to be dreaded.

Having made these observations on the purity of gentlemen's motives, observations which were due not only to candor and truth, but to the respect I feel for their personal characters, I hold myself at full liberty to explain the tendency of the present amendment, and of that system of policy of which it is a part. I mean not to impute any ill intentions to gentlemen, when I declare, and attempt to prove, that this tendency is to

the utter subversion of the present government. It is my firm and most deliberate opinion, that the amendment now under consideration, and the principles of that system to which it belongs, lead directly to the introduction of anarchy and revolution in this country; and if not steadily opposed, must sooner or later produce that effect. This opinion it is my purpose to support, by the observations which I am about to offer; and it is by a full conviction of its truth, that I have been induced to consider it as a most sacred duty, to combat the system at all times, and by all the means in my power.

The gentleman from Pennsylvania, (Mr. Gallatin,) has denied this to be the tendency of his system, and contends that our principles, not his, lead to revolution and anarchy. Revolution and anarchy, he tells us, in emphatic language, are the results of a system of expense, of war, of oppression and of arbitrary sway; the last leaf of that book, in which are written the excesses of tyranny. I agree fully with the gentleman in this position; but there is another question anterior to this, which he has omitted to discuss. It is, by what means tyranny, by what means the excesses of arbitrary government, are most likely to be produced? This question I propose to discuss with the gentleman from Pennsylvania. I mean to compare his system, his principles with ours, and to inquire which of the two is most likely to introduce arbitrary government into this country. And I hope to convince, not that gentleman himself, but the House, that if ever arbitrary government should exist here, it must owe its existence to the system of policy which that gentleman supports.

How, let me ask, Mr. Chairman, have the governments of other countries been converted from free, into arbitrary governments? By one of two ways; either a military chief, possessing little political authority, but hereditary, and having at his disposal the military force of the state, has availed himself of the frequent wars by which neighboring states are so apt

to be afflicted, has augmented that military force, and finally employed it in extending and confirming his own authority ; or in states where no military chief of this description existed, popular leaders, possessed of talents, and actuated by an inordinate ambition, have formed a strong party among the people, have invaded and finally subverted the authority of the government, and erected to themselves an absolute dominion. Every state that has lost its liberty, since the foundation of the world, till the present day, except in cases of conquest by a foreign power, has lost it by one or the other of these two methods. The first is the natural death of free monarchies, the second, of free republics ; and both ancient and modern history furnish many examples of both. It was by the first, that all the feudal states were converted into absolute monarchies, except England and Poland ; the former of which was protected, by its insular situation, from the necessity and also from the consequences of a great military power in the hands of its chief, and thus preserved its liberties, while in the latter, powerful individuals retained the military force in their own hands, divided it among themselves, kept their chief in subjection, and at length, by their feuds and civil broils, destroyed the strength of the state, and delivered it over to be subdued and divided by the neighboring powers. It was by the concentration and exercise of military force, in the hands of an hereditary chief, that the Cortes of Spain were broken under Ximenes, and the states general of France, under Richlieu and Mazarine. It was thus the great princes of Germany became absolute, in their respective dominions ; and that the Russian despotism was founded, on the ruins of feudal aristocracy.

This danger, however, does not exist in popular governments. They have no great military chief, of hereditary power, who, disposing absolutely of the public force, may use it for the extension of his own authority : and of all republics that ever have existed,

none ever was so little threatened with danger from that quarter as ours. It is needless to dwell on the reasons of this particular advantage; for they are obvious to every one. When republics fall, they fall by other means; by gradual inroads on the principles of their governments; by popular encroachments on regular authority; by the concentration of their powers in some popular body, where artful, able and aspiring demagogues obtain sway, and establish arbitrary power under the name of the people. This is the quarter from which all popular governments have been assailed, for the most part with success; and from which ours will be successfully assailed, should the principles of the gentleman from Pennsylvania ever be adopted. Thus fell Rome under the power of Cæsar; thus fell the republic of England under the power of Cromwell; and thus will fall the United States under some future Cæsar or Cromwell, unless a steady opposition be given to the system of the gentleman from Pennsylvania, of which this amendment, let it be repeated, forms a part.

When the examples of the ancient republics was adduced by my friend from Massachusetts, (Mr. Thatcher,) the gentleman from Pennsylvania denied it to be applicable, because the government of those republics was different from ours. I know, Mr. Chairman, that our government is different from that of Athens or Rome, and I wish it to keep so. That is the object of all my exertions, of all my zealous opposition, to motions like the present. To make our government like those of Athens or Rome, is, in my apprehension, the object and tendency of the system, advocated by the gentleman from Pennsylvania. How is this to be effected? By inducing this House, sometimes under this, and sometimes under that plausible pretence, to establish precedents of encroachment on the other departments; to practise on these precedents, and extend them further and further; until at length all pow-

er shall be concentrated in this House, and exercised according to the good pleasure of those members, who can obtain influence here. In Athens all power was concentrated in the hands of one body, and it was abused at the pleasure of those, who, by their eloquence, their wealth, or by any other means, could obtain the confidence, and influence the determinations of that body. In Rome, the case was somewhat different; but even there, for want of a well fixed balance in her government, the mass of the people gradually usurped all power, and transferred it to their favorites or their purchasers. By pursuing the principles of the gentleman from Pennsylvania, the same effect must be produced here. This House first begins the attack on the President. It controls his appointments, directs his measures, gives him orders under the name of advice, and if he refuses to obey them, withholds all the supplies for the service of the government. All this is justified under the gentleman's doctrine of appropriations. A favorable moment is seized for laying the corner-stone, for fixing the principle, and plausible pretexts are adduced. A treaty is made, and a popular clamor is excited against it. Advantage is taken of this clamor, to refuse an appropriation for carrying the treaty into effect, and thus a precedent of interfering in treaties is attempted to be established. A foreign minister is appointed, the reasons for whose appointment are capable of being obscured or misrepresented. The occasion is seized to deny an appropriation; and, under the pretence of saving public money, and preventing the expense of an useless appointment, an attempt is made to acquire a control over the appointments of officers. These points being carried, the precedents are soon drawn into practice, and further enterprizes are undertaken in due season. Every success gives further strength and boldness for new assaults, the cannon of every bastion that is taken, is immediately turned on the remaining works: and

finally, the President is reduced to the condition of the chief officer of this House, and the heads of department become the first clerks of its committees.

The President being demolished, the party proceeds with new vigor, and greater forces, to attack the senate, which, deprived of the support of the executive, is speedily overthrown. The House says to the senate, "unless you conform to our will, we lay our hands on the purse strings, and stop the wheels of government. Should a contest ensue, we are sure to be uppermost; for we are the immediate representatives of the people. We adore the people; nay, we are the people themselves. Therefore beware of a contest in which you have every thing to lose, and we are certain of gaining."

The senate, enfeebled and dismayed, yields by degrees to these powerful arguments, and this House remains victorious, with all power in its hands. It proceeds to appoint a committee of exterior relations, a committee of interior relations, a committee of justice, a committee of finance, and so on, and a new French Convention arises to view, where principles are set at naught, caprice is law, and the whim of the moment disposes of all public and private rights. Then follow confiscations and banishments, and a long train of tyrannical excesses ever attendant on popular bodies, in whose hands the whole powers of government have been concentrated, from the Assemblies of people at Athens, and the Comitia at Rome, down to the Rump Parliament of England, and the French Convention. Then will the member who shall possess the most art, the greatest eloquence, and the most daring spirit of enterprize, speedily form a party, by means of which, he will enslave the House, and rule the country. Should there be several of equal, or nearly equal strength, they will first divide the power among themselves; but their union will be fallacious and short. They will be employed in attempting to circumvent or undermine each other; divisions will soon arise, and

mortal quarrels will ensue; till at length the rest will sink beneath the overbearing genius of one, and he will establish his dominion uncontrolled. This is the liberty which gentlemen, should their schemes succeed, will sooner or later bestow on the country; the liberty of a few bold, able, ambitious men, to do what they please, and of the rest of the community to obey them. This, Mr. Chairman, may be very pleasant liberty, for those who are to be possessed of power; but for me and the rest of the community it has no charms, and I shall, therefore, omit no opportunity of resisting its first and most distant approaches.

Should any one object, that this state of things must be extremely distant, I beg him to recollect how short a space intervened, between the throne of Louis the Sixteenth and the scaffold on which he bled; between the absolute power of Neckar, and the despotism of Marat; between the splendid fortune of so many distinguished families, and the dungeon or the guillotine. Governments like ours, Mr. Chairman, may be compared to the planetary system, whose preservation depends entirely on the exact preservation of its balance. The exact balance between the centrifugal force and the power of gravitation, retains the planets in their orbits; but should some angel of destruction push them out of those orbits, though in ever so small a degree, the balance is lost; one power gains what is taken from the other, and these immense bodies, whose beautiful and regular play furnishes the greatest wonder of creation, fly out and are lost in boundless space, or rush to the sun with increasing and incalculable velocity, and there are mingled in one mighty ruin. Should the gentleman from Pennsylvania succeed in his present attempt, he becomes the angel of destruction to our beautiful constitution. He destroys the happy balance of its powers; and the approximation of the different departments, though slow and gradual at first, would become more rapid as it advanced, and speedily produce that concentration of power in this

House, which seems to be the object of all that gentleman's labors and cares.

It is this view of the subject, Mr. Chairman, that stimulates me to oppose this amendment, with the utmost perseverance and zeal: not that I apprehend great mischief from this particular measure, could it be viewed singly and by itself; but that I regard it as a part of a system, wholly incompatible with the existence of this government, or the happiness of this country. I regard the gentleman from Pennsylvania and his friends, in the light of an enemy, who has commenced a siege against the fortress of the constitution. He proceeds at first by cautious steps, and endeavors to make a lodgment by surprise, in some strong and advantageous outwork, from whence he may direct a more efficacious attack against the citadel itself. On this advanced ground, in this outwork, I hold it wise to resist him; convinced that success here would be the prelude to a bolder and more dangerous assault, and that all the guns which he can now carry, will immediately be turned upon our remaining fortifications.

I must now be allowed, Mr. Chairman, to say a few words as to the expediency of this measure, as to the utility of foreign ministers. To one side of the House, to me and those with whom I usually act, it is sufficient to say, that the President has thought fit to appoint foreign ministers; for we are convinced, that the right of judging on this subject, has been given exclusively to him and the senate, by the people of this country, and that when he and the senate have thought fit to exercise this right, by appointing a minister to this or that place, or of this or that grade, nothing is left for this House, but to provide an adequate salary. But other gentlemen hold a different opinion, and contend, that we may not only inquire how much the salary ought to be, but also whether the appointment itself be necessary. To gentlemen who sincerely hold this opinion, I address my remaining observations.

The gentleman from Pennsylvania, (Mr. Gallatin,)

has asserted, that ministers have nothing to do with the interests of commerce, except to make commercial treaties; while the care of seeing those treaties duly executed, and the commercial rights of individuals properly protected, belongs to consuls. Hence he infers, that foreign ministers are useless; because, we have no need to form more commercial connexions, and ought to have no political connexions, with foreign nations. In order to prove that we ought to make no more commercial treaties, he contends, that we have received much more harm than good from those already made. This is the whole amount of this part of the gentleman's argument, which includes two thirds of his long and ingenious speech; and it is wholly built on the assertion, that "commercial interests are managed by consuls, while ministers have nothing to do with commerce, except the making of treaties for its regulation." This assertion has been already refuted, and the gentleman from Pennsylvania, though he has made it the groundwork of his whole reasoning, has not attempted to prove it. For this he had very good reasons; for he well knows it to be wholly unfounded; and therefore he has contented himself with asserting it, and taking it for granted. I say, he well knows it to be unfounded, because, that gentleman is well read in the law of nations, the writers on which, as well as its maxims and doctrines, we often see him adduce with much dexterity and learning, when they suit his purpose. Now, Mr. Chairman, I may, I think, venture to affirm, that there is no student in any college, who has read the indexes of some elementary books on the law of nations, but knows, that it is the peculiar business of ministers, not only to make commercial treaties, but to watch over their execution, and to take care that the commercial rights of their country, under the law of nations, as well as under treaties, are preserved inviolate. This is a business with which consuls never interfere, and to which they are wholly inadequate; not only from the na-

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ture and powers of their appointment, but also from their local circumstances and situation. All this the gentleman from Pennsylvania well knows; and yet he has asserted, that every thing respecting the interests of our commerce in foreign countries, except the formation of commercial treaties, can be and is transacted by consuls, without the interference of ministers. This assertion is the loose block on which, for want of a better foundation, he has rested the whole edifice of his reasonings; and this block I mean to knock away. A very slight stroke will be sufficient for the purpose.

In what manner, Mr. Chairman, is the observance of a treaty of commerce, with any country, to be enforced? In what manner are infractions of such a treaty, or of the laws of nations, to be prevented or redressed? Is it not by applications to the government of that country; by representations, by remonstrances, by negociations? The gentleman from Pennsylvania will not answer in the negative. I know he will not. By whom then and where are these applications to be made, these representations, these remonstrances, to be presented, these negociations to be carried on? Must it be at the seat of government, by agents residing there; or at the sea-ports of the countries where the consuls reside? If the former, these agents will be ministers. You may call them by a different name, but the thing will be the same; for a public agent of one country, charged with the management of its affairs, and residing at the seat of the government of another, is the very definition of a foreign minister, by whatever name you may think fit to call him. As these transactions are, from their very nature, to be with the government itself, let us see whether they could possibly be managed by consuls—

In the first place, consuls, by the established law and usage of nations, have no public, official character, and cannot be admitted to any intercourse whatever, with the governments of the countries where they reside. We may, if we please, exclaim against this usage, and

call it absurd or foolish ; but it is the established usage of nations, and while it remains so, we must conform to it. Suppose, therefore, that any injury should be done to the commerce of our citizens, by French privateers for instance, or French municipalities, in contravention of our treaty, or against the law of nations, but under color of certain acts of the French government. Could redress be obtained by means of consuls? So far from it, that it could not even be applied for; since the consuls could have no access to the government. And yet the gentleman from Pennsylvania tells us, that the interests of our commerce in foreign countries can be managed by consuls!

In the next place, our consuls in foreign countries are, for the most part, natives of the countries where they reside; with very few exceptions, they are mere private merchants; and except, in the single case of the consuls to the Barbary powers, who, according to established usage, are a species of ministers, they receive no salaries. Are men of this description adequate to the protection of our commercial interests? Can they be expected to possess the requisite knowledge, for conducting affairs of this kind, or the requisite influence or weight of character? Will they abandon their own private affairs, to attend at a remote capital, and solicit the restitution of vessels, the revocation of injurious orders, or indemnification for improper seizures? If they were qualified for this business, and willing to undertake it, they certainly would not do so at their own expense. When our consul at Bourdeaux, Nantes or Marseilles, for instance, should be applied to on any business which would require an application to the French government, would he go to Paris, and remain there to finish the business, at his own expense? Certainly not. We must pay him, not only his expenses, but a compensation for his time and trouble. As these applications would frequently occur, he could not go specially for each one; but must remain always there; and we must give him

a salary sufficient to induce him to do so. He would then be a minister in fact, and in expense. He would want nothing of the character but the name, and the capacity of usefulness. This is the establishment which the gentleman from Pennsylvania wishes to substitute, in the place of our present diplomatic appointments. The consuls, in order to perform the duties which he says ought to be assigned to them, must be turned into ministers; equally expensive with the present corps, but far less efficacious.

In the third place, we should have a multitude of these new fashioned consul-ministers; for we have a variety of consuls, in each of the great maritime nations of Europe. There is one in every considerable trading town. In France, for instance, we have six or seven; perhaps a much greater number. Each of these, upon the plan of the gentleman from Pennsylvania, must reside at Paris; for it would be impossible for them to be perpetually running backward and forward, between their respective sea-ports and Paris, as often as any affair might occur requiring an application to the government. If any gentleman should doubt of this, let him look at the list now on the table, of between four and five hundred American vessels, carried into the different ports of France, or detained there contrary to the treaty, and redress for the capture and detention of which, must be obtained, if obtained at all, from the French government, by means either of a minister or of consuls. The consuls, therefore, if they are to do the business, must all reside at Paris; and instead of one minister, we should have nine or ten; perhaps a greater number. These observations will apply, with a greater or less degree of force, to every other country with which we have a considerable commerce. And yet the gentleman from Pennsylvania tells us, that our commercial relations ought to be left to consuls!

Having seen, Mr. Chairman, what the duty of consuls is not, let us now inquire, for a moment, what it is. We shall find them very necessary agents, though

wholly inadequate to the business usually committed to ministers.

In the first place, it is their duty to settle disputes, which may arise between seafaring people of their own nation, arriving in the foreign ports where they respectively reside. These disputes, we know, are apt to arise between the masters of the ships and their crews, between the crews themselves, and between the masters or crews of different ships; and these consuls are usually empowered to terminate them, in a manner less tedious and expensive than could be done, by the local laws of the country.

In the next place, they are to assist seafaring people of their own country, who may happen to have any disputes with the people of the place; are to make advances to them when in distress; and procure redress for them in all cases, where it can be afforded by the local authorities of their respective ports.

And lastly, they are to act as agents, between the people of their country and the minister; to inform him of cases which require his interference with the government, and to facilitate to the sufferers the means of applying to him. They are to be his agents in all the sea-ports; while he is the general and immediate agent of his country, with the government. They are to keep him informed of all the cases which occur in their respective ports, of violations of treaties, or of neutral rights; so that he may be enabled to take the proper steps for obtaining redress.

The duties of these agents whom we call consuls, are therefore so distinct from those of a minister, so necessary in themselves, and so incapable of being performed, except by persons residing in the sea-ports, that were all the present consuls, according to the plan of the gentleman from Pennsylvania, to be immediately sent to the capitals, and converted into ministers under a new name, their place must instantly be supplied by other agents, whom perhaps the gentleman would not choose to call consuls. but who must be in-

vested with the same powers, and perform the same duties. Such is the wise and notable scheme of the gentleman from Pennsylvania; and thus it is, he is to rid us of the expense of ministers!

Let me be permitted, Mr. Chairman, to propose another question to the gentleman from Pennsylvania. If ministers have nothing to do with commercial relations, except making treaties of commerce, how comes it to pass that the gentleman is willing for us to have ministers of the highest grade, with those two nations with whom we have treaties of commerce, and where, according to him, ministers can have nothing to do? I mean France and England; with both of which nations we have commercial treaties, and where the gentleman consents to our retaining ministers plenipotentiary. To be consistent with himself, he ought to attempt the recal of these two ministers, by refusing an appropriation for their salaries, and to leave untouched those of Lisbon and Berlin, who may possibly have something to do. But this is not the gentleman's object. He has another, which is to establish the principle of controlling the executive, in the exercise of this part of his constitutional functions, and thus effect a breach in the intrenchments of the constitution; and he will pardon me for considering this doctrine, about which he has discoursed so much, and with such ingenuity, as a mere covered way to conceal his attack.

So much, Mr. Chairman, for the utility of ministers in general; who appear to me essentially necessary, not merely for making commercial treaties, but for protecting the rights of our citizens in foreign countries, according to treaties where there are any, and under the law of nations, where there are none.

But gentlemen point particularly to the mission to Berlin. What have we to do, say gentlemen, with the minister to Berlin? What have we to do, say gentlemen, with the king of Prussia, or the politics of Germany? To me, Mr. Chairman, let me repeat it, it is

enough that the President has judged it proper to send a minister to Berlin; for to him and the senate, in my belief, and not to this House, has the constitution confided the right to decide on this subject. But to gentlemen, who are not satisfied with this answer, I will give another, and one which I promise myself they will find satisfactory. Have gentlemen, who object to this mission, adverted to the peculiar situation of Europe at this moment? Have they adverted to our own peculiar situation? We have a most disagreeable dispute with the French republic. France has made peace with the emperor; and a Congress is now sitting, if not already terminated, to settle the affairs of Germany, and adjust the balance of Europe. In this Congress, interests of the utmost magnitude in themselves, and in the highest degree important to France, are to be discussed; no less than to determine whether France shall extend her borders to the Rhine, or be restricted to the Meuse; whether more than two millions of souls, formerly subjects of the German empire, shall become citizens of the French republic. In this Congress, the king of Prussia is mediator; a youthful monarch; enterprising, warlike and ambitious, at the head of three hundred thousand of the finest troops in Europe, and with a treasury replenished by four years of peace, while the coffers of his neighbors are in a most exhausted condition. With these advantages, joined to his local position, he holds in his hands the balance of France and Germany. Prepared to strike in every direction, he is dreaded and courted by all parties, and especially by France; who feels that after Austria, now exhausted and desirous of repose, he is the power most capable of checking her ambitious designs. Hence she has the greatest possible interest to soothe and conciliate him. This monarch possesses all the finest ports in the Baltic, and a great extent of maritime territory. His predecessor, the great Frederick, sensible that commerce alone can supply money, the sinews of military strength, always felt the greatest

solicitude to render his states commercial ; and one of the means by which he hoped to effect this purpose, was to form connexions with commercial nations. This was the spirit of his government, and became a standing maxim in his system of policy. Accordingly, having discovered that the United States must speedily become a great commercial nation, he was among the first to form a treaty of commerce with us. Is there not reason to expect, that the same views may be entertained by his successor, now on the throne ? And was it not wise to do every thing in our power, for keeping up a good understanding with a monarch, who has it in his power to serve us so essentially ? How is this to be done ? By sending a minister to his court, renewing our treaty with him, which is about to expire, and holding out to him the prospect of commercial arrangements, not injurious to us, but perhaps highly desirable to him, and sufficient to procure his good offices and interference, in the adjustment of our differences with France. Would this interference be unavailing ? I apprehend not ; for France has too much interest in keeping well with this monarch, to refuse attention to his mediation. His interference, if he should choose to interfere seriously, would, on the contrary, be more efficacious, in all probability, than fifty ships of the line.

I do not know, Mr. Chairman, that this interference will be obtained, or ought much to be expected ; but I am fully persuaded, that it was wise to use the means, to send the minister, and make the attempt ; from which I have no idea that we ought to have been deterred, by the paltry consideration of saving nine or ten thousand dollars.

But gentlemen constantly repeat, that we ought to have no political connexions with the nations of Europe. This is about as wise as to say that a man ought never to have a fever. A fever, no doubt, is a very bad thing, and political connexions may also be bad things ; but we already have them, and the ques-

tion is not whether they are good or bad, but how we shall get rid of them. We not only have political connexions, but disputes of a most disagreeable nature, growing out of those connexions. This is attested by all the papers on the table, by various acts of the House, and more strongly still by the universal capture and condemnation of our property. It is vain and foolish, therefore, to repeat continually, that we ought not to have foreign connexions; but our business is to inquire, how they may be best got rid of. How is this to be done? I answer, by settling our present differences, and avoiding new ones. Unless gentlemen mean to submit, and if they do I have nothing to say to them, having already had opportunities, on former occasions, to say all that seemed necessary on that subject. Unless they now mean to submit, I repeat, that the only method of getting rid of those foreign connexions, about which they so loudly exclaim, is to settle our present differences in the best manner we can, and avoid new ones. For this purpose, we must employ ministers; and none could be more wisely employed than the one to Berlin.

This diplomatic intercourse, therefore, about which gentlemen raise so great an outcry, is perfectly consistent with a wish to get rid, as fast as we can, of foreign connexions; and if gentlemen were sincere in that wish, it appears to me that, instead of opposing these appointments, they would applaud and support them. Gentlemen must excuse me, if I say, that I do not think them sincere; that, in my opinion, foreign relations are merely a stalking horse, behind which they advance to attack the administration, and the system of policy which it has adopted. To foreign relations and foreign intercourse, in my opinion, gentlemen have no objection, provided those relations can be such as they wish, and conducted in the manner which they desire. It is against the nature of these connexions, and not to foreign connexions in themselves, that the hostility of gentlemen is directed. For

the proof of this position, I appeal to the history of the measures pursued by those gentlemen, since the commencement of this government.

I ask gentlemen, Mr. Chairman, who think with me, that the present attempt ought to be resisted, whether they can separate it from that system of measures, which its supporters have so zealously and perseveringly pursued, since the commencement of the war between France and England? I cannot. I am compelled to view it in connexion with that system, and it is this connexion which makes me dread it. Viewing it in this connexion, the time which is chosen for making the attempt, is to me its most alarming feature. This extension of foreign intercourse, which is made the pretext for the present attempt, is not a measure of this day. It was adopted in May, 1796, and that was the time for opposing it, if the reasons for the opposition were really such as gentlemen allege. But no opposition, or, at least, none of any consequence, was made at that time. I have looked over the debate which took place on that occasion; and I find that although some objections were made, they rested on a ground wholly different from that now taken. They were confined to the expediency of the measure; but not one word was said of the danger of executive influence, of the necessity of checking executive patronage. Among others, I was most struck by the observations of a gentleman from Pennsylvania, (Mr. Findley,) which agree precisely with our present doctrines, and appear to me so solid and important, that I cannot forbear presenting them to the committee. They are found in the debate of May 30th, 1796, on the extension of foreign intercourse,* and in these words:

“ Mr. Findley said, that he had voted against this measure in the committee of the whole, and he thought he was right in doing so; but he was now of opinion, that except the House had information sufficient to convince them that the appropriation was unnecessa-

ry, they ought to grant it. He wished as much as any one to save the money of the public; but he believed our government was, in some degree, obliged to conform to European practices. If we had ministers plenipotentiary at one court, he did not know where to draw the line. He believed they should do best in leaving the executive to settle this matter."

The committee, Mr. Chairman, will doubtless be struck, as I have been, with the contrast between these sentiments and those which the same gentleman, and those with whom he acts, have expressed on the present occasion. The gentleman, no doubt, has good reasons for his change of opinion, but as I do not know them, I must seek for them in the change of our situation. I should be sorry to say, or believe, that it is to be found there; but the appearance of the thing, to my mind, is so singular and so alarming, that I cannot conceal it. At that time, we had no dispute with France; now we have. At that time, the French government had not declared us to be a people divided from our government; now it has. At that time, we were not on the eve of a conflict, in which it was to be proved whether the people of this country should be governed by France, or themselves; now it is to be feared that we are. In this awful, this momentous situation of our country, when we know that France, in her hostile measures, proceeds on the persuasion, that our people are divided from our government, and this House against the executive; when we see measures here introduced, and prosecuted with unequalled zeal, the plain and direct tendency of which is to set this House at war against the executive, to degrade the President, and hold him up to public view as the enemy of liberty and unworthy of confidence; can we avoid observing, how exactly these attempts are calculated to promote the views of France? Can we avoid the impression of a concert with those on the other side of the water, the impression that gentlemen are playing into the hands of a foreign govern-

ment, which is pursuing every hostile measure against this country? This impression I wish to resist; but I fear that the public mind will not resist it; nor can I easily resist it, when I advert to that system of alliance with France and war against England, which was at an early period imported into this country, and has been ever since pursued with so much activity and perseverance, in this House.

When I say, this system of alliance and war was imported into this country, I have no allusion to any member of this House. I have no doubt that it was imported by a member of this government, but not of this House; and it was a part of the system adopted by the revolutionists of France, when they resolved to wage war against all their neighbors, especially England, for the purpose of subverting the government of their own country, and gratifying their own personal ambition. This war we know was resolved on, long before it was declared; and it was then determined that the United States should engage in it, on the part of France. A regular scheme was concerted, according to every appearance, for drawing them into it; the missionary arrived who was to convert us to this new faith, and this missionary was a citizen of our own, who was recalled from a public employment in that country, to fill a high official station here. Not long after, a French minister was sent over to second his efforts, and he came furnished with ample instructions, and fortified with ample means of seduction.

Before this minister arrived, accounts reached us, that the war between England and France was commenced. As we had extensive and important relations, both of a commercial and political nature, with those two nations, it immediately became a question of the greatest importance and solicitude, how we should act in this critical situation. In the deliberations which took place on this subject, in the cabinet of the executive, two very opposite opinions immediately appeared; one, for war on the side of France, and the

other, for a firm neutrality : and there were two men at that time in the councils of the President, who supported these two opinions. The advocate of the war system did not venture openly to oppose the system of neutrality, which he knew to be the wish of the country. To have opposed it openly ; to have declared, in plain terms, that we ought not to remain neutral, but to engage in the war, with finances so deranged, a government so imperfectly established, and a condition of affairs so unsettled, would, as he well knew, have disgusted and alarmed the people and ruined the project. He therefore acted with more art and address. He labored to the utmost to induce the President, not to decide himself upon the question of neutrality, but to convene Congress, and refer the decision to them. Why ? Because it was known that a popular body, like Congress, was infinitely more susceptible of enthusiasm, more easily wrought on by management and intrigue, more obnoxious to the influence of popular clamor, mobs and venal presses, than the cool, deliberative councils of the President. It was also known, that in case of a reference to Congress, the neutral system would lose the aid of its author's talents, who was precluded, by his official station, from a seat in that body. To this point then, the author of the war system directed his force. He labored to convince the President, that it did not belong to him to decide the question of neutrality ; but to Congress, to whom the constitution required it to be referred ; and in this effort, it is well known that he was aided, to the utmost, by that description of people, who have, since that time, omitted no opportunity in their power of hurrying us into a war against England.

Fortunately, however, the President saw and avoided the snare. His sound judgment and penetrating discernment enabled him to perceive all the hazards of such a reference : his good sense prevented him from entertaining a doubt about his constitutional power to decide this question, and his firmness enabled

him to make and support the decision. The proclamation of neutrality accordingly appeared.

It no sooner made its appearance, than the war party and their chief raised an outcry against it, from one end of the continent to the other. The French minister, (Genet,) who arrived soon after, remonstrated; the popular societies formed under his auspices, published resolutions, and the venal presses, the principal of which was under the immediate direction of the author of the war system, poured forth abuse against the proclamation of neutrality, the minister who advised it, and the President by whom it was issued. In short, Mr. Chairman, no expedient, which disappointed intrigue and an artful, enraged spirit of party could devise, was omitted, for raising an universal, popular indignation against this proclamation of neutrality, and for preparing Congress to condemn and reverse it. The changes were rung from town to town, from state to state, and from one end of the union to the other, on pusillanimity, on national degradation, on ingratitude to France, on servile submission to England; and this proclamation was furiously assailed, with the very same weapons which we have since seen employed against the British treaty, justly considered as a part of the same system of neutrality.

The efforts of the friends of war and their chief, were, however, unavailing. The people of America, indeed, felt a warm and almost enthusiastic partiality for France, whom they considered as contending for liberty, and on this partiality the party founded strong hopes of success. But the good sense of the people enabled them to discern, that whatever might be their wishes for the success of France, the interests of their own country lay in preserving peace; and they gave, throughout the union, the most unequivocal proofs of approbation, to the proclamation of neutrality. When Congress met, this sentiment had become so strong and universal, that the war party did not dare to oppose it. The proclamation was approved of by Con-

other, for a firm neutrality: and then at that time in the councils of the President supported these two opinions. The administration did not venture openly to oppose neutrality, which he knew to be the wish of the people. To have opposed it openly; to have taken terms, that we ought not to remain engaged in the war, with finances so demoralized, so imperfectly established, and public affairs so unsettled, would, as he well knew, have alarmed the people and ruined the country. He therefore acted with more art than force. He labored to the utmost to induce the President to decide himself upon the question of convening Congress, and refer the matter to them. Why? Because it was known that Congress, like Congress, was infinitely more susceptible of enthusiasm, more easily wrought on by intrigue, more obnoxious to the influence of clamor, mobs and venal presses, than the deliberative councils of the President. He knew that in case of a reference to Congress the administration would lose the aid of its author, and that it was precluded, by his official station, from doing otherwise. To this point then, the administration directed his force. He labored to induce the President, that it did not belong to him to decide upon the question of neutrality; but to Congress. The constitution required it to be referred to them. It is well known that he was aided, in this, by the description of people, who have omitted no opportunity in their power to bring us into a war against England.

Fortunately, however, the President did not fall into the snare. His sound judgment and discernment enabled him to perceive the danger of such a reference: his good sense prevented him from entertaining a doubt about his power to decide this question, and his firmness

gress, and the party and their chief once more had a hook put into their nose.

Though a second time disappointed, they did not, however, lose courage, nor abandon their schemes. But, as a system of neutrality had now been adopted, it was too late to talk of war; and the next step, therefore, was to explain this neutrality, in such a manner, as would render it, in effect, an alliance with France, and a state of hostility against England. This was attempted accordingly; but, as the author of the war system held an official station in the executive department, he could not openly appear in the attempt. The French minister came forward and advanced the pretensions, which it was the part of the other personage to second and support, in the President's council. A right was claimed on the part of France, to arm, fit and commission ships of war in our ports; to exclude British ships of war, under pretences which would have applied to every possible case; to enlist crews among our citizens; to raise armies in our country; and to preclude our courts of justice from all cognizance of prizes, taken and brought in by vessels acting under French commissions. It was contended on the part of France, that we ought to resist, by force, the right claimed by England, and clearly acknowledged by the law of nations, to take the goods of her enemies, when found on board of our neutral vessels. It requires no discernment, Mr. Chairman, to see that these pretensions, had they been agreed to, would have placed the direction of our affairs in the hands of France, and must instantly have induced a state of war between us and England. This was well understood by the war party; and, therefore, as every body recollects, they aided and supported the French minister, to the utmost of their power. These pretensions, indeed, were repelled by the President, who adopted a system wholly different, a system of national independence and fair neutrality; but it is well known to have been adopted contrary to the opinion and in spite of

the efforts of the chief of this party. When it was adopted, he did indeed defend it, in his official character; but he has taken care to declare his abhorrence of it, and the French minister did not fail to accuse him of duplicity, for having written officially in its defence. While officially defended by their chief, the party themselves assailed it with the most persevering violence. The haranguers exclaimed, the self-created societies passed resolutions, the presses devoted to the party teemed with abuse, and that, in particular, which was under the immediate direction of the chief, poured forth one continued torrent of virulent invective. Afraid to attack the head of the executive department himself, whose tried virtue, whose splendid services, whose great and well earned popularity, could not fail to rouse the public indignation, against any who might impeach the purity of his conduct, all the shafts were levelled at the counsellor, by whose advice the system was supposed to have been adopted, and by whose talents it was ably supported. It was every where declared, and every where most industriously propagated, that this person had enslaved the mind of the President, and misled his judgment. Every where, by every press and every club, was this person branded as a speculator, a thief, a plunderer of the public treasury, which was under his superintendence, a wretch in the pay of England, in fine, the most profligate of traitors, and the most dangerous of public enemies. These calumnies, asserted within these walls, circulated by members of this House, were industriously wafted from state to state, for the purpose of overwhelming with obloquy and public hatred, the author and prop of the neutral system, as an essential step towards the destruction of the system itself. When the public mind was thought to be sufficiently prepared, a direct attack was made on him in this House, for the purpose of driving him from office, so that the President, deprived of his counsels, might the more easily be brought to concur in the designs of the

war party and of France. The charges before circulated in a vague and indirect form, were reduced to a specific accusation, and brought before this House, as the grounds of a vote of impeachment. But although the party had met with some success, while they confined themselves to their strong hold, to the "*Ambiguas in vulgum spargere voces*" which I mentioned in the beginning of my observations, yet when they ventured to fight on the open plain of fact and proof, they were totally routed; when their vague calumnies assumed the shape of resolutions, they were easily refuted. Every charge was repelled by a vast majority of this House; and the wise and virtuous statesman to whom his country is so much indebted, rising triumphant from the contest, established his fame and his system on a basis more solid than ever: like some mighty oak, whose roots are more strongly fixed, and new vigor added to its growth, by those storms which seem to threaten its overthrow.

Thus the war party were again discomfited; and in spite of all their efforts, aided by the efforts of the French minister, a system of fair and impartial neutrality, calculated to preserve justice to all, and keep peace with all, was completely established. •

Though beaten, however, Mr. Chairman, they were not subdued; nor could they be induced to relinquish their favorite object of war and alliance. They waited for a favorable opportunity of renewing the attack, and that opportunity the unjust aggressions of England on our trade too soon supplied. These aggressions, joined to the remembrance of our former contest with that power and the resentments remaining from her former injuries, raised a flame of indignation throughout the country, which pervaded all classes and distinctions of people, and prepared the public mind for measures of hostility. The occasion was seized by the war party, and used with an activity and zeal which gave them the fairest prospects of success. The at-

tempts were not direct; because, in that case, the people might have been brought to reflect.

The great object then, as before, was war against England, and alliance with France; but not one word was said about war or alliance, words which might have created alarm, and given rise to hesitation. But measures were proposed, the direct and inevitable tendency of which was to widen the breach with England, and inflame the two countries more and more against each other. These measures assumed various shapes to suit the feelings and catch the passions of particular individuals or classes of men, and were urged with unremitting zeal, and indefatigable industry. Sometimes commercial restrictions on the trade of England were attempted; sometimes the intercourse between the two countries was to be cut off; and sometimes confiscation and sequestration were resorted to. Many of our best citizens, and the firmest friends to peace and neutrality, were impelled by the warmth of the moment, and the insinuations of this party, to favor and even propose or advocate these measures; and nothing was omitted to raise a storm of popular resentment and public odium against all those who had the firmness to withstand them. To speak of negotiation was branded as pusillanimity; to speak of attempts at amicable adjustment, was pronounced to be little short of treason. Gentlemen, for their opposition to these hostile measures, were stigmatized on this floor as the agents of England; mobs were hired to burn them in effigy in various towns in the union; the presses devoted to the war party assailed them with continued volleys of calumny; their names were coupled with every disgraceful epithet, with every vile accusation; in the toasts of clubs, and the resolutions of societies; and finally, by all these means, aided by the continued aggressions of England, an universal flame was excited in the country, and the party saw itself approach to the moment of its triumph over the system of peace and neutrality.

When the country was thus on the point of rushing down the precipice, the President of the United States, destined so often to become its saviour, again stretched out his paternal hand and prevented the fall. Interposing the powers of his office, and his unbounded personal popularity, between the legislature and the gulf at the very brink of which it had almost arrived, he arrested its career, and afforded the country time to recover from its delirium. He sent an envoy extraordinary, to make one further attempt at an amicable adjustment of our differences with England, before we should resolve to terminate them by the sword; and by this step he again broke the measures of the war party.

Their rage was proportioned to their disappointment, and it hurried them into the most furious invectives against the President, against the envoy, and against all who were understood to favor the measure. Every body remembers, Mr. Chairman, how they accused this envoy of being a tool of the British ministry, an enemy to liberty, and even an opposer of the independence of this country. Every body remembers what clamours were raised about the unconstitutionality of his appointment; how the clubs toasted, the orators harangued, and the societies resolved. Every body remembers how all the presses, under the influence of this party, loudly alleged, that the friends of the negotiation were a faction devoted to England, and that the President of the United States, by sending the envoy, had placed himself at the head of the faction. Every one remembers how the leaders of this party did not refrain from repeating these accusations within the walls of this House, and even on this floor. It was in vain that the friends of the measure and of peace, spoke to them in language like this. "Let this attempt at negotiation be made, and if it fails, we will join you in war. Should England refuse to do us justice, when thus peaceably applied to, we will join you in every measure of compulsion. We consider this as

the last effort at negotiation; and so the President has announced it in his message for nominating the envoy." No! These gentlemen now so peaceable, when France repels with contempt two successive efforts at negotiation, and meets all our advances by new measures of hostility, could then be satisfied with nothing less, than immediate measures of coercion and irritation against England. A single attempt to negotiate, they reprobated as pusillanimity, and the very idea of a compromise they treated as a surrender of the rights and honor of the country.

When the envoy arrived, and presented a memorial, stating all our claims, and urging satisfaction, but urging in the usual forms of diplomatic civility, these forms were converted into a cause of accusation, a most violent outcry was raised against this civility by the very gentlemen who now proclaim their unbounded and even enthusiastic approbation of the conduct of the late minister to France, who, in his first address to the government of that republic, assured it solemnly and publicly, that this country was ready to submit cheerfully to any infractions of its treaties or violation of its rights, which France might think it for her own advantage to commit! Whence this strange inconsistency, but from an eager desire of war against England, and a blind servile devotedness to France? And will gentlemen after all this deny, that the whole scope of the measures, the whole drift of the system of their party, has been war against England and alliance with France?

The envoy, however, continued to negotiate, and at length concluded a treaty, by which ancient differences were adjusted, and the foundation laid for amity in future. No sooner did the treaty arrive in the country, than every artifice was used to enflame the public mind, and excite against it the popular prejudices. Nothing was omitted to defeat it in the senate, and when ratified by that body, it was attacked by every coffee-house politician of the party, before it was published, by all

their presses, and by the resolutions of all the clubs. When made public, the most unheard of means were used to overwhelm it with general odium, to raise an universal cry against it, and deter the President from giving it his sanction. In every town, mobs were assembled, under the more respectable name of town meetings; those of a different opinion were silenced by clamor, intimidated by threats, or actually driven away by violence; and all opposition or discussion being thus prevented, these assemblages of ignorant and illiterate men were prevailed upon to vote by acclamation for resolutions which they were incapable of understanding, and could not even hear.

Thus the appearance of a formidable popular rising in various parts of the continent, was exhibited, and the phrenzy caught. It spread wider and wider, and aided by various auxiliary passions, drew into its vortex great masses of the best citizens. The country again seemed on the point of rushing down the precipice; but fortunately its guardian genius yet presided over its affairs. The President of the United States again placed himself in the breach, and received on his buckler all the strokes, aimed at the happiness of his country. He spoke to the people, they heard the voice of their father, they listened and became calm. He ratified the treaty; and the people said, "It is done, and must it not be supported? He has done it, and is it not right?" They listened and were appeased, they read and were convinced, they discovered their first errors, acknowledged and renounced them.

But not so the party, whose object was war against England at all events. They saw in this treaty the death of their hopes, the final frustration of all their projects; for this treaty took away all cause of quarrel between the two countries; and they resolved to make one grand effort for its destruction, which being accomplished, all the ancient disputes would be reinstated with new aggravation; and a rupture would be rendered by so much the more certain, as there could

be no faith in any new accommodation. To this object they bent their whole force, and this House was the place chosen for the attack. When the treaty came before this House to be carried into effect, doctrines, new to the constitution and incompatible with its existence, were introduced, in order to destroy it. The treaty-making power was attempted to be rendered subject to the control of this House; as the power of appointing foreign ministers is now attempted to be rendered subject. The treaty was attacked through the sides of the constitution; a war was sought by the overthrow of our government, and the violation of our plighted faith. But a firm resistance was given to these attempts. Enlightened discussions spread the truth before the eyes of the people. Warned by the errors into which they had before been drawn, and roused by the magnitude of the danger, they rose in their might, and the party was dismayed; they spoke and it trembled; they put forth their hand and touched it, and it sunk to the earth.

Thus again, Mr. Chairman, were the projects of these gentlemen confounded. Thus again were they prevented from effecting their purpose, so much desired, of driving this country into war with England and into the fraternal embraces of France.

The remaining history is known. The French, under pretexts so frivolous, that not one gentleman on this floor has been found hardy enough to defend them, have quarrelled with us on account of this treaty; because, by terminating our differences with England, it cuts off all hopes of our being drawn into war against her. In this quarrel, France proceeded, avowedly, on the ground of our being a divided people, opposed to our government, and attached to her, repels all our amicable advances, meets them with new injuries, and declares, that before she will listen to us, we must tread back all our steps, reverse our whole system of policy, break our treaty with England, and admit her own construction of her treaty with us. In this criti-

cal and alarming situation of affairs, the same description of persons, the same individuals even, who so perseveringly attempted to bring us into a war against England, according to the views of France, who have so uniformly and with so much zeal supported all the pretensions of France, now come forward and make a direct attack on the executive, the tendency of which necessarily is to divide it from this House, when there is the utmost need of union, and withdraw from it the confidence of the people, when that confidence is more than ever essential. What is this but a continuation of the same system? And are we to be blamed for seeing, in this attempt, a new effort to throw this country into the arms of France, by rendering the government unable to resist her; by forcing it, from weakness, to submit to her mandates; to break, in obedience to them, its treaty with England, and substitute, in its place, an alliance, offensive and defensive, with her?

If this be not the object of gentlemen; if it be not their intention thus to serve their country, by reducing it to the situation of Holland, how are we to reconcile their present with their former conduct; their eagerness for hostile measures formerly, with their tame, submissive spirit now: their zealous opposition to every thing like negotiation formerly, with their equally zealous opposition to every thing like resistance now? If this be not their system, then all that I can say about their present measures, contrasted with those pursued by them on a former occasion, about their former eagerness for alliance with one foreign nation, and war with another, contrasted with their present declamations against all sorts of foreign connexions or intercourse, is to exclaim, in the eloquent language of the gentleman from Pennsylvania, that those measures form the last leaf of that book, wherein are written the inconsistencies of party.

Whether this system of war and alliance, this system of fraternity with France, such as the Dutch now enjoy, and hostility under her orders against all her

enemies; this system, so steadily pursued, but so often defeated, shall now at length begin to triumph, I consider as the question now to be decided. It is now to be decided, whether an important step shall be taken, towards compelling our government, through debility, to submit implicitly to France, towards laying this country, bound hand and foot, at the feet of that haughty, domineering nation. To take this step, to commence the triumph of the fraternal system, I take to be the object, as I know it to be the tendency of the inroad on the executive power attempted by this amendment. Hence it is that I oppose it with the warmest zeal, and with all my might; and if my opposition shall contribute, in the smallest degree, to its defeat, I shall neither regret the time I have occupied, nor apologize for the trouble I have given to the committee.

INAUGURAL ADDRESS
OF
THOMAS JEFFERSON,
PRESIDENT OF THE UNITED STATES,
DELIVERED MARCH 4, 1801.



FRIENDS AND FELLOW-CITIZENS,

CALLED upon to undertake the duties of the first executive office of our country, I avail myself of the presence of that portion of my fellow-citizens which is here assembled, to express my grateful thanks for the favor with which they have been pleased to look towards me, to declare a sincere consciousness, that the task is above my talents, and that I approach it with those anxious and awful presentiments, which the greatness of the charge, and the weakness of my powers, so justly inspire. A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye; when I contemplate these transcendent objects, and see the honor, the happiness and the hopes of this beloved country committed to the issue and the auspices of this day, I shrink from the contemplation, and humble myself before the magnitude of the undertaking. Utterly indeed, should I despair, did not the presence of many, whom I here see, remind me, that, in the other high authorities provided

by our constitution, I shall find resources of wisdom, of virtue and of zeal, on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked, amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have past, the animation of discussions and of exertions, has sometimes worn an aspect which might impose on strangers unused to think freely, and to speak and to write what they think ; but this being now decided by the voice of the nation, announced according to the rules of the constitution, all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable ; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression. Let us then, fellow-citizens, unite with one heart and one mind, let us restore to social intercourse, that harmony and affection without which, liberty, and even life itself, are but dreary things. And let us reflect, that having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little, if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore ; that this should be more felt and feared by some, and less by others ; and should divide opinions as to measures of safety ; but every difference of opinion is not a difference of principle. We have

called by different names brethren of the same principle. We are all republicans: we are all federalists. If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know, indeed, that some honest men fear that a republican government cannot be strong; that this government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm, on the theoretic and visionary fear, that this government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest government on earth. I believe it the only one, where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said, that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or, have we found angels in the form of kings, to govern him? Let history answer this question.

Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high minded to endure the degradations of the others, possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation, entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them, enlightened by a benign religion, professed indeed and practised in various forms, yet all of them inculcating honesty, truth, temperance,

gratitude and the love of man, acknowledging and adoring an overruling providence, which, by all its dispensations, proves that it delights in the happiness of man here, and his greater happiness hereafter; with all these blessings, what more is necessary to make us a happy and prosperous people? Still one thing more, fellow-citizens, a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities.

About to enter, fellow-citizens, on the exercise of duties which comprehend every thing dear and valuable to you, it is proper you should understand what I deem the essential principles of our government, and consequently, those which ought to shape its administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political: peace, commerce and honest friendship with all nations, entangling alliances with none: the support of the state governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies: the preservation of the general government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad: a jealous care of the right of election by the people, a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided: absolute acquiescence in the decisions of the majority, the vital principle of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism: a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them:

the supremacy of the civil over the military authority: economy in the public expense, that labor may be lightly burdened: the honest payment of our debts and sacred preservation of the public faith: encouragement of agriculture, and of commerce as its hand-maid: the diffusion of information, and arraignment of all abuses at the bar of the public reason: freedom of religion; freedom of the press; and freedom of person, under the protection of the *habeas corpus*: and trial by juries impartially selected. These principles form the bright constellation, which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages, and blood of our heroes, have been devoted to their attainment: they should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty and safety.

I repair, then, fellow-citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this the greatest of all, I have learned to expect that it will rarely fall to the lot of imperfect man, to retire from this station with the reputation, and the favor, which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose pre-eminent services had entitled him to the first place in his country's love, and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask your indulgence for my own errors which will never be intentional; and your support against the errors of others, who may condemn what

they would not, if seen in all its parts. The approbation implied by your suffrage, is a great consolation to me for the past; and my future solicitude will be, to retain the good opinion of those who have bestowed it in advance, to conciliate that of others, by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying then on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choices it is in your power to make. And may that infinite Power which rules the destinies of the universe, lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

SPEECH OF STEPHENS T. MASON,

ON

THE JUDICIARY ESTABLISHMENT,

DELIVERED IN THE SENATE OF THE UNITED STATES,
JANUARY 13, 1802,

On the following motion : “ *Resolved*, That the act of Congress, passed on the 13th day of February, 1801, entitled ‘ An Act to provide for the more convenient organization of the courts of the United States,’ ought to be repealed.”

The Act of 1801, referred to in the above resolution, very essentially changed the judicial system of the United States, from what it had been previous to that time. It provided for the establishment of several new tribunals, denominated Circuit Courts, the abolition of which was the principal object of the advocates of the resolution.

MR. PRESIDENT,

I FEEL some degree of embarrassment in offering my sentiments on a subject so fully and so ably discussed. I believe, that the ground taken by my friend from Kentucky, has not been shaken by any arguments urged in opposition to the resolution on the table. Yet, as some observations have been made, calculated to excite sensibility, not here, but abroad ; as they appear to have been made with a view to that end ; and as an alarm has been attempted to be excited on constitutional ground, I think the observations ought not to go unnoticed.

I agree with gentlemen, that it is important, in a well regulated government, that the judicial department should be independent. But I have never been among those who have carried this idea to the extent which seems at this day to be fashionable. Though

of opinion, that each department ought to discharge its proper duties free from the fear of the others, yet I have never believed, that they ought to be independent of the nation itself. Much less have I believed it proper, or that our constitution authorizes our courts of justice, to control the other departments of the government.

All the departments of a popular government must depend, in some degree, on popular opinion. None can exist without the affections of the people, and if either be placed in such a situation as to be independent of the nation, it will soon lose that affection which is essential to its durable existence.

Without, however, going into an inquiry of what kind of organization is most fit for our tribunals; without inquiring into the fitness of making the judges independent for life, I am willing to enterin to a consideration, not of what ought to be, but of what is. Whatever opinion I may individually entertain of the provisions of the constitution, relative to the judiciary, sitting here under that constitution, I am bound to observe it as the charter under which we are assembled.

When I view the provisions of the constitution on this subject, I observe a clear distinction between the supreme court and other courts. I am sensible, that when we come to make verbal criticisms, any gentleman, of a sportive imagination, may amuse our fancies by a play upon words. But this is not the way to get rid of a genuine construction of the constitution. With regard to the institution of the supreme court, the words are imperative; while, with regard to inferior tribunals, they are discretionary. The first shall, the last may be established. And surely, we are to infer from the wise sages that formed that constitution, that nothing was introduced into it in vain. Not only sentences, but words, and even points, elucidate its meaning. When, therefore, the constitution, using this language, says, a supreme court shall be established, are we not justified in considering it as of consti-

tutional creation? And, on the other hand, from the language applied to inferior courts, are we not equally justified in considering their establishment as dependent upon the legislature, who may, from time to time, ordain them, as the public good requires? Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this subject, than that the legislature should have power, from time to time, to create, to annul, or to modify the courts, as the public good may require; not merely to-day, but forever; and whenever a change of circumstances may suggest the propriety of a different organization. On this point, there is great force in the remark of the gentleman from Georgia, that among the enumerated powers given to Congress, while there is no mention made of the supreme court, the power of establishing inferior courts is expressly given. Why this difference, but that the supreme court was considered by the framers of the constitution, as established by the constitution; while they considered the inferior courts as dependent upon the will of the legislature.

We find the phrase, from time to time, in another part of the constitution. The third section of the second article says, the President shall, from time to time, give to the Congress information of the state of the union. That is, he shall occasionally, as he sees fit, give such information. So shall Congress occasionally, as they see fit, establish, annul, or regulate inferior courts, accordingly as the public welfare requires.

The arguments of gentlemen go upon a mistaken principle. They express the liveliest sympathy and commiseration for this poor, this weak department of our government. They tell us, the judges have a vested right to their offices, a right not now derived from the law, but from the constitution; and they assimilate their case to that of a public debt; to the right of a corporation; a turnpike company, or a toll-bridge.

But is not all this reasoning predicated on the principle, that the courts are established, not for the public benefit, but for the emolument of the judges; not to administer justice, but for their personal aggrandizement. I believe that a government ought to proceed upon different principles. It ought to establish only those institutions which the good of the community requires; when that good ceases to need them, they ought to be put down, and of consequence, the judges should hold their appointments so long and no longer, than the public welfare requires.

If the arguments now urged be correct, that a court once established cannot be vacated, we are led into the greatest absurdities. Congress might deem it expedient to establish a court for particular purposes, limited as to its objects or duration. For instance, the United States has taken possession of the Mississippi territory, rightfully or not, I will not pretend to say. This territory has been, heretofore, in the hands of various masters, viz. France, England, Spain and Georgia; and it is now possessed by the United States. All these governments, except the United States, made certain grants of lands in the territory, and certain settlers spread their conflicting patents over the country. These different titles will open a wide field for litigation, which will require able tribunals to decide upon. Suppose then Congress should establish special tribunals, to continue for three, four or five years, to settle these claims. Judges would be appointed. They would be the judges of an inferior court. If the construction of the constitution now contended for be established, what would the judges say, when the period, for which they were appointed, expired? Would they not say, we belong to inferior courts? Would they not laugh at you, when you told them their term of office was out? Would they not say, in the language of the gentleman from New York, though the law that creates us is temporary, we are in by the constitution? Have we not heard this doc-

trine supported in the memorable case of the mandamus, lately before the supreme court? Was it not there said, that though the law had a right to establish the office of a justice of the peace, yet it had not a right to abridge its duration to five years; that it was right in making the justices, but unconstitutional in limiting their periods of office; that being a judicial officer, he had a right to hold his office during life, (or what is about the same thing,) during good behaviour, in despite of the law which created him, and in the very act of creation, limiting his official life to five years.

I may notice another case, more likely to happen, to show the absurdity of this construction. Congress have assumed jurisdiction over the Mississippi territory, and have established a court composed of three judges, which court is as much an inferior court, as the circuit or district courts. Of this jurisdiction, Georgia denies the validity. The contest is in a train of settlement. Suppose it shall turn out that the United States are convinced of the injustice of their claim, relinquish it, and restore the territory to Georgia, what becomes of the judges? Their offices, their duties are gone! Yet they will tell you, we are vested with certain constitutional rights of which you cannot deprive us. It is true the territory is no longer yours. You have no jurisdiction, and we have no power; yet we are judges by the constitution. We hold our offices during good behaviour, and we will behave well as long as you will let us. Is not this a strange situation? You have judges in a territory over which you have no jurisdiction; and you have officers which are perfect sinecures, pensioners for life. Such an absurdity, I am sure the constitution never meant to justify. It is an absurdity equally repugnant to the letter and the genius of the constitution.

Suppose another case. Suppose, what I trust will never happen, a war should take place. Suppose that a part of the United States should be conquered, and

that we should be compelled to cede it to a foreign nation. In this district your jurisdiction is gone ; your power is gone ; the office of a judge is destroyed, and yet the officer holds his appointment for life : this case may be considered as inapplicable to the United States. It may be said, that we have no right to cede a state, or a part of a state. But I believe a different sentiment has been entertained, and perhaps in this House.

But suppose this event to occur in relation to territory not attached to a state. Suppose the government should find it necessary to establish an inferior court in an island of Lake Superior. Suppose it should be the fortune of war to place in the possession of the enemy, one of the states ; and the question shall be, will you give up this territory in the frozen regions of the lakes, or suffer the state to remain in the possession of the enemy, you being unable to take it from him ? If you give up the territory, your court is annihilated, yet the judges claim a tenure in their offices for life ; and this in a country that no longer belongs to you—does not such a result strike every mind as absurd ? Is it not apparent, that whatever claim such men might have upon the generosity of the government, they can have no claim to offices that do not exist. Nay, further ; it might, upon the construction now contended for, be insisted, that the constitution forbids you to make a peace upon those terms ; that by ceding an inconsiderable territory which you did not want to secure a whole state, you would abolish the office of a judge, which the legislature had there erected ; that this would be an express violation of your constitution ; and therefore you must leave a whole state in the possession of the enemy, unless this judge would give you leave to make terms by resigning his office.

I believe, sir, that we should not differ much, if we came to a proper understanding of the true principle on which this question depends. If we establish the principle, that from the nature and essence of the pub-

lic institutions, they are made for the good of the people, and not for that of the individual who administers them, we shall experience no difficulty. Gentlemen, in speaking of a judge, had emphatically called it his office. But it is not his office, but the office of the people. He is only the person appointed to perform certain services required by the public good, and when those services are no longer necessary for that public good, his duties are at an end, his service may be dispensed with, and he ought to retire to private life.

The case had been assimilated to a bridge. But he who builds a bridge does a public good, that entitles him to a growing remuneration forever. But here the good is temporary. The truth is, the judge is more like the man who collects the toll, and who receives the promise of an annual payment, as long as he discharges his duties faithfully. But a flood comes, and sweeps away the bridge; will the toll gatherer, like the judge, contend, that though the bridge is gone, and the owner ruined, that he shall notwithstanding receive his compensation for life, though he cannot continue those services for which his annual stipend was to be the compensation and reward.

But it would seem, that the argument urged on this occasion, and the general course of our legislation had been grounded more on the convenience and emoluments of those appointed to office, than on grounds of public utility. First, we appointed six judges of the supreme court, divided the United States into three circuits, two judges to ride each circuit, in which, with the district judge, to form a court. The law fixed the duties and the compensation, and gentlemen of the first character were ready to accept the places. The salaries, indeed, had been thought high; in some parts of the union they were thought enormous. But a little time passed before they complained of the hardships of their duties; and the law was altered, not so much for public good, as for their personal convenience. Where two judges

were required to hold a court, one was now declared sufficient. Thus you continued their full salaries, while you lopped off half their duties. Shortly after, you assigned them, under the pension law, inconsiderable duties; and they refused to perform them. Thus, while they showed themselves ready to abate of their duties, they adhered to their salaries. Next came the law of last session which takes away all their duties. It leaves them simply a court of appeals. And what have they got to do? To try ten suits; for such is the number now on their docket, as appears from a certificate just put into my hands; and the average number on their docket amounts to from eight to ten. Thus, for the trial of the immense number of eight or ten suits, you have six judges, one with a salary of four thousand, and five others with salaries of three thousand, five hundred dollars each.

I fear that if you take away from these judges, that which they ought officially to do, they will be induced, from the want of employment, to do that which they ought not to do, they may do harm. They may be induced, perhaps, to set about that work gentlemen seem so fond of. They may, as gentlemen have told us, hold the constitution in one hand, and the law in the other, and say to the departments of government, so far shall you go and no farther. This independence of the judiciary, so much desired, will, I fear, sir, if encouraged or tolerated, soon become something like supremacy. They will, indeed, form the main pillar of this goodly fabric; they will soon become the only remaining pillar, and they will presently become so strong, as to crush and absorb all the others into their solid mass.

We have been told, that no state in the union has presumed to touch the judiciary establishment, excepting the state of Maryland. I will not answer for others; but with respect to Virginia, I will answer, that she has touched it. Her constitutional provision for the independence of the judges is nearly similar to that

of the United States, and yet she has established, modified and entirely put down particular departments of her system.

[Here Mr. Mason went into a particularization of the different changes the judiciary system of Virginia had undergone. After the particularization, Mr. Mason proceeded,]

And yet our judges, who are extremely tenacious of their rights, did not complain. They thought, as I think, that they should not be removed from their offices, that others might be placed in them; and that while they did continue in office, their salaries should be preserved to them. And I believe the whole of our constitutional provision amounts to this; that, unlike other officers appointed by the President, they shall not be removed by him; that their salaries shall not be diminished by the legislature; and that, while the legislature may continue any particular judicial establishment under which a judge is appointed, he shall hold that appointment in defiance of both the other departments of government. A judge may say, I am not to be turned out of office by the President on the one hand, or starved by the legislature on the other. He may say to the legislature or the President, and to both of them combined, you shall not turn me out of this office as long as it exists, to gratify your enmity to me, or your favoritism to another person; so long as the interest and convenience of the people require this institution, they are entitled to my services; they shall have them, and I will be paid for them to the utmost farthing, in spite of your displeasure or caprice.

Notwithstanding the remarks of gentlemen, I am inclined to think these ideas of the extreme independence of the judges, and the limited powers of the legislature, are not very old, but they are of modern origin, and have grown up since the last session of Congress. For, in the law passed last session, that very law which it is now proposed to repeal, is to be found a practical

exposition in direct hostility with the principle now contended for, which does not betray that sacred regard for the office of a judge, that is, on this occasion, professed: in that very law will be found a clause which abolishes two district courts. The twenty-fourth section says expressly, "the district courts of Kentucky and Tennessee shall be and hereby are abolished." Will gentlemen tell this House how this express provision came into the act of the last session; and will they say, that though they voted for this law, yet no power exists in the legislature to abolish a court? It is true, that it has been said, that though you put down two district courts, you promoted the officers by increasing their salaries and making them judges of the circuit courts; but the fact is, you have abolished their offices; they are judges no longer of the districts of Kentucky and Tennessee; and they are, to every purpose, whatever may be their name, in reality circuit judges. Though you have not lessened their salaries, you have deprived them of their offices. However, therefore, gentlemen may calculate as to the benefit or injury done these two judges, the principle is not affected by any result; their offices are gone.

It is not enough to say, that though you destroyed their offices, you offered them others with higher salaries. You took away from them, in express terms, their offices, by abolishing the offices. You had stripped them of their offices, you had robbed them of their vested right, and then, to make friends, offered them a compensation; but whether the compensation thus offered for the deprivation they had suffered, was really equivalent to their loss, is a mere matter of calculation, and does not affect the constitutional principle. It is proper, however, to observe, that they were no parties to the proposed compromise, and that, indeed, they had no choice left them. They were obliged to accept of what you offered them, or have nothing. If they did not agree to become judges of the newly organized circuit courts, they could not remain

judges of the district courts, for these courts were absolutely and completely abolished.

Were I, Mr. President, to make a calculation on the comparative increase of duties and additional salary, in the case of one of those gentlemen, (Judge Innes, of Kentucky,) I should have no hesitation to say, that the bargain which has been made without his consent, and without his being a party to it, is a very bad one for him. Knowing too his particular situation, I am persuaded, that if the law had left him any election between his former and new situation, he would have preferred remaining where he was, and without a moment's hesitation, he would have rejected your proffered promotion, as it is called. This gentleman resides within a very few miles of Frankfort, where, as district judge of Kentucky, he held his court. Attached to domestic life, and enjoying all its felicities, engaged in and pleased with agricultural pursuits, he was never under the necessity, even during the sessions of the courts, to sleep out of his own bed one night, or to be separated a single day from his family. He could every morning give directions for the management of his farm, and return early enough in the evening to see whether his orders were executed.

How is he situated under the change which has been forced upon him? Instead of attending one court almost at his door, your late law obliges him to attend four. The nearest at Bairdstown, fifty or sixty miles from home. You oblige him to travel through dreary and inhospitable regions to the north-western territory, something short of an hundred miles; and much greater distances to, and through still worse countries, Knoxville and Nashville, in Tennessee. In going from one to the other of those last mentioned places, he will have to pass through the country of the Cherokee Indians, nearly one hundred miles over the Cumberland mountains, where he will be exposed to every inclemency of the weather, without a shelter to retire to, for there is not a house or a hut in the whole jour-

ney; a journey in which all travellers are obliged, at all times, and of unavoidable necessity, to sleep one night at least, and from the fall of rains, and rise of watercourses, often many nights, without a roof to cover them from the beating of the storm; and moreover, where they are liable at every step to be robbed by the Indians, as I myself experienced, passing through that wilderness. Can it be supposed, that the five hundred dollars added to the salary of Judge Innes, should, by a person situated as he was, be deemed a sufficient compensation for the additional duties, the toils, the dangers, and the deprivations to which that law subjected him? In continuing to serve his country, I am sure he must have been influenced more by a sense of duty than a regard to private interest, or a belief that the change was in any respect advantageous to him.

By the seventh section of the law of the last session, which transforms the district into circuit courts, which melts down the judges and recoins them, it is enacted: That there shall be a circuit court, composed of one new circuit judge, and two old district judges, to be called the sixth circuit. Have you not then established a new office by the destruction of the old one? Have you not done more? Have you not violated the constitution, by declaring, by law, who shall fill this new office: though the constitution declares, article second, section second, That the President shall nominate, and by and with the advice and consent of the senate, shall appoint all officers which shall be established by law.

Where were these guardians of the constitution—these vigilant sentinels of our rights and liberties, when this law passed? Were they asleep upon their post?—Where was the gentleman from New York, who has, on this debate, made such a noble stand in favor of a violated constitution? Where was the *Ajax Telamon* of his party, or, to use his own more correct expression, the faction to which he belonged? Where was the

hero with his seven-fold shield? Not of bull's hide, but of brass, prepared to prevent or to punish this Trojan rape which he now sees meditated upon the constitution of his country by a wicked faction? Where was Hercules, that he did not crush this den of robbers that broke into the sanctuary of the constitution? Was he forgetful of his duty? Were his nerves unstrung? Or, was he the very leader of the band that broke down these constitutional ramparts?

I shall now, sir, trouble you with a few remarks on the expediency of repealing this law. It has been said, that there is nothing peculiarly disgusting in this law; that there has been no public clamor excited against it; that it was enacted with solemnity, on calm and deliberate reflection, and that time has not been yet given to test it by experience.

As no member, who has taken part in debate, was a member of this body when the law passed, I will say something of its history. I am not disposed to excite the sensibility of gentlemen, by any remarks which I shall make, or to call up unpleasant recollections of past scenes. But when I hear it said, that this law was passed with calmness, after mature reflection, and that we are now in a fit of passion, going to undo what was thus wisely done, I think it necessary that the public should have a correct statement.

It is true, that under the last administration, when there existed, (what I trust will never, in an equal degree, exist again,) an immoderate thirst for executive patronage, a proposition was made to establish a new judiciary system; a system worse than the present; as it proposed, according to my recollection, thirty-eight judges instead of sixteen. This law was very near passing. It was, however, rejected in the House of Representatives by a very small majority. But it was circulated as a project of a law among the people. It was ill received. It was thought too rank a thing, and met with general disapprobation throughout the United States, as far as I have been able to learn. Af-

ter this reception, it was softened down to the plan introduced at the last session. What temper accompanied the progress of the bill in the other House I know not, nor if I did know, would it be proper for me here to say? But with respect to the acts of this body, I am not of opinion they added any dignity to our common course of procedure. The bill was referred to a committee, who, though it was very long, reported it without any amendment. Various amendments were offered, some of which were admitted to be proper. But they were not received. One, indeed, proposed by a member from Connecticut, who was chairman of the committee, and was then hostile to the plan, did pass, in the early stages of the bill, but on the third reading it was expunged. All amendments proposed by the minority were uniformly rejected, by a steady, inflexible and undeviating majority. I confess that I saw no passion, but I certainly did see great pertinacity; something like what the gentleman from Connecticut had termed a holding fast. No amendments were admitted; when offered, we were told, no; you may get them introduced by a rider or supplementary bill, or in any way you please; but down this bill must go; it must be crammed down your throats. This was not the precise phrase, but such was the amount of what was said.

I will say, that not an argument was urged in favor of the bill, not a word to show the necessity or propriety of the change. Yet we are told, that there was great dignity, great solemnity in its progress and passage!

But there is something undignified in thus hastily repealing this law; in thus yielding ourselves to the fluctuations of public opinion! So we are told! But if there be blame, on whom does it fall? Not on us, who respected the public opinion when this law was passed, and who still respect it; but on those who, in defiance of public opinion, passed this law, after that public opinion had been decisively expressed. The revolu-

tion in public opinion had taken place before the introduction of this project; the people of the United States had determined to commit their affairs to new agents; already had the confidence of the people been transferred from their then rulers into other hands. After this exposition of the national will, and this new deposit of national confidence, the gentlemen should have left untouched this important and delicate subject—a subject on which the people could not be reconciled to their views, even in the flood-tide of their power and influence; they should have forbore, till agents, better acquainted with the national will, because more recently constituted its organs, had come into the government. This would have been more dignified, than to seize the critical moment when power was passing from them, to pass such a law as this. If there is error, it is our duty to correct it; and the truth was, no law was ever more execrated by the public.

Let it not be said, postpone the repeal till the next session. No—let us restore those gentlemen to private life, who have accepted appointments under this law. This will be doing them greater justice, than by keeping them in office another year, till the professional business, which once attached to them, is gone into other channels.

[Mr. Mason went into an examination of the number of suits depending at the time the law was passed, and particularly the number brought within the twelve months preceding its passage; from the fewness of which, and their being in a state of diminution rather than increase, he inferred the inutility of the additional judges. He continued,]

If, on this review, we find the number of suits decreasing instead of increasing; if the courts then established were found competent to the prompt and faithful discharge of all the duties devolved upon them, the law was unnecessary; and if unnecessary, the additional expense incurred by it was unnecessary; and all unnecessary expense should be sav-

ed. It is true, that fifty thousand dollars, divided among the people of the United States, amounted to but one cent a man; but the principle was still the same. It has been very fashionable of late to justify every unnecessary expense by stating each item by itself, and dividing it among the whole people. In this way, every expense is held forth as of little consequence! Gentlemen say, in this case, it is only one cent a man! In the case of the Mausoleum, two hundred thousand dollars came to only four cents a man! In the direct tax, it is only forty cents! They talk of our army, it only comes to a few cents for each person, who may sell as many cabbages to the soldiers themselves as to pay it! So in a navy. In this way are the most extravagant expenses whittled down to a mere fraction. But this kind of federal arithmetic I can never accede to. It may suit an expensive government; but it is an imposition upon the people.

It has been urged with some force, by the gentlemen from New York and Connecticut, that the small number of suits is an evidence of the efficacy and ability of our courts of justice. I am willing to admit the force of this remark; but I must apply it very differently from those gentlemen. I must apply it to the state of the dockets when this law passed; and from their being very few at the time, I must infer that the system existing then was an excellent one, as it wielded the power of the laws so effectually, that there was but little necessity for enforcing the law against delinquents.

From the remarks made by the gentleman from Connecticut, it might be inferred that we were about to destroy all our courts, and that we were in future, to have no courts. Is this the case? Are we contending for breaking down the whole judiciary establishment? On the contrary, we barely say, the courts you had before the passage of this law were sufficient; return, therefore, to them. This law, which we wish repealed, imparts no new authorities to your judges; it clothes them with no additional terrors; it adds not

to their axes, nor increases the number of their rods. It only enlarges their number, which was before large enough.

The gentleman from New York has amused himself with a great deal of handsome rhetoric; but I apprehend without bearing much upon the question. There is one idea, however, which he has seized with ecstasy, the idea of a great state kneeling at the altar of federal power; and he deplores that this spectacle, the most sublime that his imagination can conceive, is vanished forever. But if he will consult those stores of history with which he so often amuses and instructs his audience, he will find still more splendid humiliations. He will find the proud monarchs of the east, surrounded with all the decorations of royalty, dragged at the chariot-wheel of the conqueror. In more modern times, he will behold a king of England and of France, one holding the stirrup and the other the bridle, while the pope mounted his horse. If not contented with the contemplation of these illustrious degradations, he may resort to sacred writ, to which he so often appeals; and in the very book of Judges, he will behold a famous king of Jerusalem, surrounded by three-score and ten dependent kings, picking up the crumbs from under his table, and what made the humiliation more charming, all these kings had their thumbs and great-toes cut off.

But if the gentleman from New York wishes to be gratified with a more modern idea of sovereign degradation, I would refer him to the memorable threat of an individual, a servant of the people, to humble a whole state, a great state too, in dust and ashes. A state upon her knees before six venerable judges, decorated in party-colored robes, as ours formerly were, or arrayed in more solemn black, such as that they have lately assumed, hoping, though a state, that it might have some chance for justice, exhibits a spectacle of humble and degraded sovereignty far short of the dreadful denunciation to which I allude! If the

gentleman feels, as I know many do, rapture at the idea of a state being humiliated and humbled into the dust, I envy him not his feelings. At such a thought, I acknowledge I feel humbled. If the degradation were confined to kings and tyrants, to usurpers who had destroyed the liberties of nations, I should not feel much commiseration; but when applied to governments, instituted by the people for the protection of their liberties, and administered only to promote their happiness, I feel indignant at the idea of degraded sovereignty. I should feel the same interest for any state, large or small, whether it were the little state of Delaware herself, or the still more insignificant republic of St. Marino.

SPEECH OF GOUVERNEUR MORRIS,

ON

THE JUDICIARY ESTABLISHMENT,

DELIVERED IN THE SENATE OF THE UNITED STATES,
JANUARY 14, 1802,

On the following motion, "*Resolved*, That the act of Congress, passed on the 13th day of February, 1801, entitled 'An Act to provide for the more convenient organization of the courts of the United States, ought to be repealed.' "*"

MR. PRESIDENT,

I HAD fostered the hope that some gentleman, who thinks with me, would have taken upon himself the task of replying to the observations made yesterday, and this morning, in favor of the motion on your table. But since no gentleman has gone so fully into the subject, as it seems to require, I am compelled to request your attention.

We were told, yesterday, by the honorable member from Virginia, that our objections were calculated for the by-standers, and made with a view to produce effect upon the people at large. I know not for whom this charge is intended. I certainly recollect no such observations. As I was personally charged with making a play upon words, it may have been intended for me. But surely, sir, it will be recollected that I declined that paltry game, and declared that I considered the verbal criticism, which had been relied on, as irrelevant. If I can recollect what I said, from recollecting well what I thought, and meant to say, sure I am, that I uttered nothing in the style of an appeal to

* See page 82.

the people. I hope no member of this House has so poor a sense of its dignity as to make such an appeal. As to myself, it is now near thirty years since I was called into public office. During that period, I have frequently been the servant of the people, always their friend; but at no one moment of my life their flatterer, and God forbid that I ever should be. When the honorable gentleman considers the course we have taken, he must see, that the observation he has thus pointed, can light on no object. I trust, that it did not flow from the consciousness of his own intentions. He, I hope, had no view of this sort. If he had, he was much, very much mistaken. Had he looked round upon those, who honor us with their attendance, he would have seen that the splendid flashes of his wit excited no approbatory smile. The countenances of those by whom we were surrounded, presented a different spectacle. They were impressed with the dignity of this House; they perceived in it the dignity of the American people, and felt, with high and manly sentiment, their own participation.

We have been told, sir, by the honorable gentleman from Virginia, that there is no independent part of this government; that in popular governments, the force of every department, as well as the government itself, must depend upon popular opinion. The honorable member from North Carolina has informed us, that there is no check for the overbearing powers of the legislature but public opinion; and he has been pleased to notice a sentiment I had uttered—a sentiment which not only fell from my lips, but which flowed from my heart. It has, however, been misunderstood and misapplied. After reminding the House of the dangers to which popular governments are exposed from the influence of designing demagogues upon popular passion, I took the liberty to say, that we, we the Senate of the United States, are assembled here to save the people from their most dangerous enemy, to save them from themselves; to guard them against

the baneful effects of their own precipitation, their passion, their misguided zeal. It is for these purposes that all our constitutional checks are devised. If this be not the language of the constitution, the constitution is all nonsense. For why are the senators chosen by communities, and the representatives directly by the people? Why are the one chosen for a longer term than the other? Why give one branch of the legislature a negative upon the acts of the other? Why give the President a right to arrest the proceedings of both, till two thirds of each should concur? Why all these multiplied precautions, unless to check and control that impetuous spirit, that headlong torrent of opinion, which has swept away every popular government that ever existed.

With the most respectful attention, I heard the declaration of the gentleman from Virginia, of his own sentiment. "Whatever," said he, "may be my opinion of the constitution, I hold myself bound to respect it." He disdained, sir, to profess an attachment he did not feel, and I accept his candor as a pledge for the performance of his duty. But he will admit this necessary inference from that frank confession, that although he will struggle (against his inclination,) to support the constitution, even to the last moment; yet, when in spite of all his efforts it shall fall, he will rejoice in its destruction. Far different are my feelings. It is possible that we are both prejudiced, and that in taking the ground, on which we respectively stand, our judgments are influenced by the sentiments which glow in our hearts. I, sir, wish to support this constitution, because I love it; and I love it, because I consider it as the bond of our union; because in my soul I believe, that on it depends our harmony and our peace; that without it, we should soon be plunged in all the horrors of civil war; that this country would be deluged with the blood of its inhabitants, and a brother's hand raised against the bosom of a brother.

After these preliminary remarks, I hope I shall be in-

dulged while I consider the subject in reference to the two points which have been taken, the expediency and the constitutionality of the repeal.

In considering the expediency, I hope I shall be pardoned for asking your attention to some parts of the constitution, which have not yet been dwelt upon, and which tend to elucidate this part of our inquiry. I agree fully with the gentleman, that every section, every sentence, and every word of the constitution, ought to be deliberately weighed and examined; nay, I am content to go along with him, and give its due value and importance to every stop and comma. In the beginning, we find a declaration of the motives which induced the American people to bind themselves by this compact. And in the foreground of that declaration, we find these objects specified; "to form a more perfect union, to establish justice, and to insure domestic tranquillity." But how are these objects effected? The people intended to establish justice. What provision have they made to fulfil that intention? After pointing out the courts, which should be established, the second section of the third article informs us, "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the

supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Thus then we find that the judicial power shall extend to a great variety of cases, but that the supreme court shall have only appellate jurisdiction in all admiralty and maritime causes, in all controversies between the United States and private citizens, between citizens of different states, between citizens of the same state claiming lands under different states, and between a citizen of the United States and foreign states, citizens or subjects. The honorable gentleman from Kentucky, who made the motion on your table, has told us that the constitution, in its judiciary provisions, contemplated only those cases which could not be tried in the state courts. But he will, I hope, pardon me when I contend that the constitution did not merely contemplate, but did by express words, reserve to the national tribunals a right to decide, and did secure to the citizens of America a right to demand their decision, in many cases evidently cognizable in the state courts. And what are these cases? They are those, in respect to which, it is by the constitution presumed, that the state courts would not always make a cool and calm investigation, a fair and just decision. To form, therefore, a more perfect union, and to insure domestic tranquillity, the constitution has said there shall be courts of the union to try causes, by the wrongful decision of which, the union might be endangered or domestic tranquillity be disturbed. And what courts? Look again at the cases designated. The supreme court has no original jurisdiction. The constitution has said that the judicial powers shall be vested in the supreme and inferior courts. It has declared that the judicial power, so vested, shall extend to the cases mentioned, and that the supreme court shall not have original jurisdiction in those cases. Evidently, therefore, it has declared, that they shall (in the first instance) be tried by inferior courts. with

appeal to the supreme court. This, therefore, amounts to a declaration, that the inferior courts shall exist. Since, without them, the citizen is deprived of those rights for which he stipulated, or rather those rights verbally granted, would be actually withheld; and that great security of our union, that necessary guard of our tranquillity, be completely paralyzed, if not destroyed. In declaring, then, that these tribunals shall exist, it equally declares, that the Congress shall ordain and establish them. I say they shall; this is the evident intention, if not the express words, of the constitution. The convention in framing, the American people in adopting that compact, did not, could not presume, that the Congress would omit to do what they were thus bound to do. They could not presume, that the legislature would hesitate one moment, in establishing the organs necessary to carry into effect those wholesome, those important provisions.

The honorable member from Virginia has given us a history of the judicial system, and, in the course of it, has told us, that the judges of the supreme court knew, when they accepted their offices, the duties they had to perform, and the salaries they were to receive. He thence infers, that if again called on to do the same duties, they have no right to complain. Agreed—but that is not the question between us. Admitting that they have made a hard bargain, and that we may hold them to a strict performance, is it wise to exact their compliance to the injury of our constituents? We are urged to go back to the old system; but let us first examine the effects of that system. The judges of the supreme court rode the circuits, and two of them, with the assistance of a district judge, held circuit courts and tried causes. As a supreme court, they have in most cases only an appellate jurisdiction. In the first instance, therefore, they tried a cause, sitting as an inferior court, and then, on appeal, tried it over again, as a supreme court. Thus then the appeal was from the sentence of the judges to the judges them-

selves. But say, that to avoid this impropriety, you will incapacitate the two judges who sat on the circuit from sitting in the supreme court to review their own decrees. Strike them off; and suppose, either the same or a contrary decision to have been made on another circuit, by two of their brethren in a similar case: for the same reason you strike them off, and then you have no court left. Is this wise? Is it safe? You place yourselves in the situation where your citizens must be deprived of the advantage given to them of a court of appeals, or else run the greatest risk that the decision of the first court will carry with it that of the other.

The same honorable member has given us a history of the law passed the last session, which he wishes now to repeal. That history is accurate at least in one important part of it. I believe that all amendments were rejected, pertinaciously rejected; and I acknowledge that I joined heartily in that rejection. It was for the clearest reason on earth. We all perfectly understood, that to amend the bill was to destroy it; that if ever it got back to the other House, it would perish. Those, therefore, who approved of the general provisions of that bill, were determined to adopt it. We sought the practicable good, and would not, in pursuit of unattainable perfection, sacrifice that good to the pride of opinion. We took the bill, therefore, with its imperfections, convinced, that when it was once passed into a law, it might be easily amended.

We are now told, that this procedure was improper; nay, that it was indecent; that public opinion had declared itself against us; that a majority, (holding different opinions,) was already chosen to the other House; and that a similar majority was expected for that in which we sit. Mr. President, are we then to understand, that opposition to the majority in the two Houses of Congress is improper, is indecent? If so, what are we to think of those gentlemen, who, not only with proper and decent, but with laudable motives, (for

such is their claim,) so long, so perseveringly, so pertinaciously opposed that voice of the people, which had so repeatedly, and for so many years, declared itself against them, through the organ of their representatives? Was this indecent in them? If not, how could it be improper for us to seize the only moment, which was left for the then majority to do what they deemed a necessary act? Let me again refer to those imperious demands of the constitution, which called on us to establish inferior courts. Let me remind gentlemen of their assertion on this floor, that centuries might elapse before any judicial system could be established with general consent. And then let me ask, being thus impressed with the sense of the duty and the difficulty of performing that arduous task, was it not wise to seize the auspicious moment?

Among the many stigmas affixed to this law, we have been told, that the President, in selecting men to fill the offices which it created, made vacancies and filled them from the floor of this House; and that but for the influence of this circumstance, a majority in favor of it could not have been found. Let us examine this suggestion. It is grounded on a supposition of corrupt influence, derived from a hope, founded on two remote and successive contingencies. First, the vacancy might or might not exist; for it depended as well on the acceptance of another as on the President's grant; and secondly, the President might or might not fill it with a member of this House. Yet on this vague conjecture, on this unstable ground, it is inferred, that men in high confidence violated their duty. It is hard to determine the influence of self-interest on the heart of man. I shall not, therefore, make the attempt. In the present case, it is possible that the imputation may be just, but I hope not, I believe not. At any rate, gentlemen will agree with me, that the calculation is uncertain, and the conjecture vague.

But let it now, for argument's sake, be admitted, saving always the reputation of honorable men, who

are not here to defend themselves—let it, I say, for argument's sake, be admitted, that the gentlemen alluded to acted under the influence of improper motives. What then? Is a law that has received the varied assent required by the constitution, and is clothed with all the needful formalities, thereby invalidated? Can you impair its force by impeaching the motives of any member who voted for it? Does it follow, that a law is bad because all those who concurred in it cannot give good reasons for their votes? Is it not before us? Must we not judge of it by its intrinsic merit? Is it a fair argument, addressed to our understanding, to say, we must repeal a law, even a good one, if the enacting of it may have been effected, in any degree, by improper motives? Or, is the judgment of this House so feeble, that it may not be trusted?

Gentlemen tell us, however, that the law is materially defective, nay, that it is unconstitutional. What follows? Gentlemen bid us repeal it. But is this just reasoning? If the law be only defective, why not amend? And if unconstitutional, why repeal? In this case, no repeal can be necessary; the law is in itself void; it is a mere dead letter.

To show that it is unconstitutional, a particular clause is pointed out, and an inference is made, as in the case of goods, where, because there is one contraband article on board, the whole cargo is forfeited. Admit, for a moment, that the part alluded to were unconstitutional, this would in nowise affect the remainder. That part would be void, or if you think proper, you can repeal that part.

Let us, however, examine the clause objected to on the ground of the constitution. It is said, that by this law the district judges, in Tennessee and Kentucky, are removed from office by making them circuit judges. And again, that you have by law appointed two new offices, those of circuit judges, and filled them by law, instead of pursuing the modes of appointment prescribed by the constitution. To prove all this, the gentle-

man from Virginia did us the favor to read those parts of the law which he condemns, and if I can trust to my memory, it is clear, from what he read, that the law does not remove these district judges, neither does it appoint them to the office of circuit judges. It does, indeed, put down the district courts; but is so far from destroying the offices of district judge, that it declares, the persons filling those offices, shall perform the duty of holding the circuit courts. And so far is it from appointing circuit judges, that it declares, the circuit courts shall be held by the district judges. But gentlemen contend, that to discontinue the district courts, was in effect to remove the district judge. This, sir, is so far from being a just inference from the law, that the direct contrary follows as a necessary result; for it is on the principle, that these judges continue in office after their courts are discontinued, that the new duty of holding courts is assigned to them. But gentlemen say, this doctrine militates with the principles we contend for. Surely not. It must be recollected, sir, that we have repeatedly admitted the right of the legislature to change, alter, modify and amend the judiciary system, so as best to promote the interest of the people. We only contend, that you shall not exceed or contravene the authority by which you act. But, say gentlemen, you forced this new office on the district judges, and this is in effect a new appointment. I answer, that the question can only arise on the refusal of those judges to act. But is it unconstitutional to assign new duties to officers already existing? I fear, that if this construction be adopted, our labors will speedily end; for we shall be so shackled, that we cannot move. What is the practice? Do we not every day call upon particular officers to perform duties not previously assigned to or required of them? And must the executive, in every such case, make a new appointment?

But as a further reason to restore, by repealing this law, the old system. an honorable member from

North Carolina has told us, the judges of the supreme court should attend in the states, to acquire a competent knowledge of local institutions, and for this purpose should continue to ride the circuits. I believe there is great use in sending young men to travel; it tends to enlarge their views, and give them more liberal ideas than they might otherwise possess. Nay, if they reside long enough in foreign countries, they may become acquainted with the manners of the people, and acquire some knowledge of their civil institutions. But I am not quite convinced, that riding rapidly from one end of this country to the other, is the best way to study law. I am inclined to believe, that knowledge may be more conveniently acquired in the closet than in the high road. It is moreover to be presumed, that the first magistrate would, in selecting persons to fill these offices, take the best characters from the different parts of the country, who already possess the needful acquirements. But admitting that the President should not duly exercise, in this respect, his discretionary powers, and admitting that the ideas of the gentleman are correct, how wretched must be our condition! These, our judges, when called on to exercise their functions, would but begin to learn their trade, and that too at a period of life when the intellectual powers, with no great facility, can acquire new ideas. We must, therefore, have a double set of judges. One set of apprentice-judges to ride circuits and learn; the other set of master-judges, to hold courts and decide controversies.

We are told, sir, that the repeal asked for is important, in that it may establish a precedent, for that it is not merely a question on the propriety of disbanding a corps of sixteen rank and file; but that provision may hereafter be made, not for sixteen, but for sixteen hundred, or sixteen thousand judges, and that it may become necessary to turn them to the right about. Mr. President, I will not, I cannot presume, that any such provision will ever be made, and therefore I cannot

conceive any such necessity; I will not suppose, for I cannot suppose, that any party or faction will ever do any thing so wild, so extravagant. But I will ask, how does this strange supposition consist with the doctrine of gentlemen, that public opinion is a sufficient check on the legislature, and a sufficient safeguard to the people? Put the case to its consequences, and what becomes of the check? Will gentlemen say, it is to be found in the force of this wise precedent? Is this to control succeeding rulers, in their wild, their mad career? But how? Is the creation of judicial officers the only thing committed to their discretion? Have they not, according to the doctrine contended for, our all at their disposal, with no other check than public opinion, which, according to the supposition, will not prevent them from committing the greatest follies and absurdities? Take then all the gentleman's ideas, and compare them together, it will result, that here is an inestimable treasure put into the hands of drunkards, madmen and fools.

But away with all these derogatory suppositions. The legislature may be trusted. Our government is a system of salutary checks: one legislative branch is a check on the other. And should the violence of party spirit bear both of them away, the President, an officer high in honor, high in the public confidence, charged with weighty concerns, responsible to his own reputation, and to the world, stands ready to arrest their too impetuous course. This is our system. It makes no mad appeal to every mob in the country. It appeals to the sober sense of men selected from their fellow-citizens for their talents, for their virtue; of men advanced in life, and of matured judgment. It appeals to their understanding, to their integrity, to their honor, to their love of fame, to their sense of shame. If all these checks should prove insufficient, and alas! such is the condition of human nature, that I fear they will not always be sufficient, the constitution has given us one more: it has given us an inde-

pendent judiciary. We have been told, that the executive authority carries your laws into execution. But let us not be the dupes of sound. The executive magistrate commands, indeed, your fleets and armies; and duties, imposts, excises, and other taxes are collected, and all expenditures are made by officers whom he has appointed. So far, indeed, he executes your laws. But these, his acts, apply not often to individual concerns. In those cases, so important to the peace and happiness of society, the execution of your laws is confided to your judges; and therefore are they rendered independent. Before, then, that you violate that independence—pause. There are state sovereignties, as well as the sovereignty of the general government. There are cases, too many cases, in which the interest of one is not considered as the interest of the other. Should these conflict, if the judiciary be gone, the question is no longer of law, but of force. This is a state of things which no honest and wise man can view without horror.

Suppose, in the omnipotence of your legislative authority, you trench upon the rights of your fellow-citizens, by passing an unconstitutional law: if the judiciary department preserve its vigor, it will stop you short: instead of a resort to arms, there will be a happier appeal to argument. Suppose a case still more impressive. The President is at the head of your armies. Let one of his generals, flushed with victory, and proud in command, presume to trample on the rights of your most insignificant citizen: indignant of the wrong, he will demand the protection of your tribunals, and safe in the shadow of their wings, will laugh his oppressor to scorn.

Having now, I believe, examined all the arguments adduced to show the expediency of this motion, and which, fairly sifted, reduce themselves at last to these two things: restore the ancient system, and save the additional expense. Before I close what I have to say on this ground, I hope I shall be pardoned for saying

one or two words about the expense. I hope, also, that, notwithstanding the epithets which may be applied to my arithmetic, I shall be pardoned for using that which I learned at school. It may have deceived me when it taught me that two and two make four: but though it should now be branded with opprobrious terms, I must still believe that two and two do still make four. Gentlemen of newer theories, and of higher attainments, while they smile at my inferiority, must bear with my infirmities, and take me as I am.

In all this great system of saving; in all this ostentatious economy, this rage of reform, how happens it that the eagle eye has not yet been turned to the mint? That no one piercing glance has been able to behold the expenditures of that department? I am far from wishing to overturn it. Though it be not of great necessity, nor even of substantial importance; though it be but a splendid trapping of your government; yet, as it may, by impressing on your current coin the emblems of your sovereignty, have some tendency to encourage a national spirit, and to foster the national pride, I am willing to contribute my share for its support. Yes, sir, I would foster the national pride. I cannot indeed approve of national vanity, nor feed it with vile adulation. But I would gladly cherish the lofty sentiments of national pride. I would wish my countrymen to feel like Romans, to be as proud as Englishmen; and, going still farther, I would wish them to veil their pride in the well bred modesty of French politeness. But can this establishment, the mere decoration of your political edifice, can it be compared with the massy columns on which rest your peace and safety? Shall the striking of a few half pence be put into a parallel with the distribution of justice? I find, sir, from the estimates on your table, that the salaries of the officers of the mint amount to ten thousand, six hundred dollars, and that the expenses are estimated at ten thousand, nine hundred: making twenty-one thousand, five hundred dollars.

I find that the actual expenditures of the last year, exclusive of salaries, amounted to twenty-five thousand, one hundred and fifty-four dollars; add the salaries, ten thousand, six hundred dollars, we have a total of thirty-five thousand, seven hundred and fifty-four dollars; a sum which exceeds the salary of these sixteen judges.

I find further, that during the last year, they have coined cents and half cents to the amount of ten thousand, four hundred seventy three dollars and twenty-nine cents. Thus their copper coinage falls a little short of what it costs us for their salaries. We have, however, from this establishment, about a million of cents; one to each family in America; a little emblematical medal, to be hung over their chimney pieces; and this is all their compensation for all that expense. Yet not a word has been said about the mint; while the judges, whose services are so much greater, and of so much more importance to the community, are to be struck off at a blow, in order to save an expense which, compared with the object, is pitiful. What conclusion, then, are we to draw from this predilection?

I will not pretend to assign to gentlemen the motives by which they may be influenced; but if I should permit myself to make the inquiry, the style of many observations, and more especially the manner, the warmth, the irritability, which have been exhibited on this occasion, would lead to a solution of the problem. I had the honor, sir, when I addressed you the other day, to observe, that I believed the universe could not afford a spectacle more sublime than the view of a powerful state kneeling at the altar of justice, and sacrificing there her passion and her pride: that I once fostered the hope of beholding that spectacle of magnanimity in America. And now what a world of figures has the gentleman from Virginia formed on his misapprehension of that remark. I never expressed any thing like exultation at the idea of a state ignomi-

niously dragged in triumph at the heels of your judges. But permit me to say, the gentleman's exquisite sensibility on that subject, his alarm and apprehension, all show his strong attachment to state authority. Far be it from me, however, to charge the gentleman with improper motives. I know that his emotions arise from one of those imperfections in our nature, which we cannot remedy. They are excited by causes which have naturally made him hostile to this constitution, though his duty compels him reluctantly to support it. I hope, however, that those gentlemen, who entertain different sentiments, and who are less irritable on the score of state dignity, will think it essential to preserve a constitution, without which, the independent existence of the states themselves will be but of short duration.

This, sir, leads me to the second object I had proposed. I shall, therefore, pray your indulgence, while I consider how far this measure is constitutional. I have not been able to discover the expediency, but will now, for argument's sake, admit it; and here, I cannot but express my deep regret for the situation of an honorable member from North Carolina. Tied fast as he is, by his instructions; arguments, however forcible, can never be effectual. I ought, therefore, to wish, for his sake, that his mind may not be convinced by any thing I shall say; for hard indeed would be his condition, to be bound by the contrariant obligations of an order and an oath. I cannot, however, but express my profound respect for the talents of those who gave him his instructions, and who, sitting at a distance, without hearing the arguments, could better understand the subject than their senator on this floor, after full discussion.

The honorable member from Virginia has repeated the distinction, before taken, between the supreme and the inferior tribunals; he has insisted on the distinction between the words *shall* and *may*; has inferred from that distinction, that the judges of the inferior courts

are subjects of legislative discretion; and has contended that the word *may* includes all power respecting the subject to which it is applied, consequently to raise up and to put down, to create and to destroy. I must entreat your patience, sir, while I go more into this subject than I ever supposed would be necessary. By the article, so often quoted, it is declared, "that the judicial power of the United States, *shall* be vested in one supreme court, and in such inferior courts, as the Congress *may* from time to time establish." I beg leave to recall your attention to what I have already said of these inferior courts. That the original jurisdiction of various subjects being given exclusively to them, it became the bounden duty of Congress to establish such courts. I will not repeat the argument already used on that subject. But I will ask those, who urge the distinction between the supreme court and the inferior tribunals, whether a law was not previously necessary before the supreme court could be organized. They reply, that the constitution says, there shall be a supreme court, and therefore the Congress are commanded to organize it, while the rest is left to their discretion. This, sir, is not the fact. The constitution says, the judicial power shall be vested in one supreme court, and in inferior courts. The legislature can, therefore, only organize one supreme court, but they may establish as many inferior courts as they shall think proper. The designation made of them by the constitution is, such inferior courts as the Congress may from time to time ordain and establish. But why, say gentlemen, fix precisely one supreme court, and leave the rest to legislative discretion? The answer is simple: it results from the nature of things, from the existent and probable state of our country. There was no difficulty in deciding that one and only one supreme court would be proper or necessary, to which should lie appeals from inferior tribunals. Not so as to these. The United States were advancing in rapid progression. Their population of three millions was soon to

become five, then ten, afterwards twenty millions. This was well known, as far as the future can become an object of human comprehension. In this increase of numbers, with a still greater increase of wealth, with the extension of our commerce and the progress of the arts, it was evident, that although a great many tribunals would become necessary, it was impossible to determine either on the precise number or the most convenient form. The convention did not pretend to this prescience; but had they possessed it, would it have been proper to have established then all the tribunals necessary for all future times? Would it have been wise to have planted courts among the Chickasaws, the Chocktaws, the Cherokees, the Tuscaroras, and God knows how many more, because at some future day the regions over which they roam might be cultivated by polished men? Was it not proper, wise and necessary, to leave in the discretion of Congress, the number and the kind of courts which they might find it proper to establish for the purpose designated by the constitution? This simple statement of facts, facts of public notoriety, is alone a sufficient comment on, and explanation of, the word on which gentlemen have so much relied. The convention in framing, the people in adopting, this compact, say the judicial power shall extend to many cases, the original cognizance whereof shall be by the inferior courts; but it is neither necessary, nor even possible, now to determine their number or their form: that essential power, therefore, shall vest in such inferior courts as the Congress may, from time to time, in the progression of time and according to the indication of circumstances, establish: not provide, or determine, but establish. Not a mere temporary provision, but an establishment. If, after this, it had said in general terms, that judges should hold their offices during good behaviour, could a doubt have existed on the interpretation of this act, under all its attending circumstances, that the judges of the inferior courts were intended, as well as those of the supreme

court? But did the framers of the constitution stop there? Is there then nothing more? Did they risk on these grammatical niceties the fate of America? Did they rest here the most important branch of our government? Little important, indeed, as to foreign danger: but infinitely valuable to our domestic peace, and to personal protection against the oppression of our rulers. No; lest a doubt should be raised, they have carefully connected the judges of both courts in the same sentence; they have said "the judges both of the supreme and inferior courts," thus coupling them inseparably together. You may cut the bands, but you can never untie them. With salutary caution they devised this clause, to arrest the overbearing temper which they knew belonged to legislative bodies. They do not say the judges simply, but the judges of the supreme and inferior courts shall hold their offices during good behaviour. They say, therefore, to the legislature, you may judge of the propriety, the utility, the necessity of organizing these courts; but when established, you have done your duty. Anticipating the course of passion in future times, they say to the legislature, you shall not disgrace yourselves by exhibiting the indecent spectacle of judges established by one legislature removed by another: we will save you also from yourselves: we say these judges shall hold their offices; and surely, sir, to pretend that they can hold their office after the office is destroyed, is contemptible.

The framers of this constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered, that since that day, many of the states, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. The convention contemplated the very act you now attempt. They knew also the jealousy and the power of the states: and they established for your and for their protection, this most important department. I beg gentlemen to hear and remember what I say: it

is this department alone, and it is the independence of this department, which can save you from civil war. Yes, sir, adopt the language of gentlemen, say with them, by the act to which you are urged, "if we cannot remove the judges, we can destroy them." Establish thus the dependence of the judiciary department; who will resort to them for protection against you? Who will confide in, who will be bound by their decrees? Are we then to resort to the *ultimate reason* of kings? Are our arguments to fly from the mouths of our cannon?

We are told, that we may violate our constitution, because similar constitutions have been violated elsewhere. Two states have been cited to that effect, Maryland and Virginia. The honorable gentleman from Virginia tells us, that when this happened in the state he belongs to, no complaint was made by the judges. I will not inquire into that fact, although I have the protest of the judges now lying before me: judges eminent for their talents, renowned for their learning, respectable for their virtue. I will not inquire what constitutions have been violated. I will not ask either when or where this dangerous practice began, or has been followed; I will admit the fact. What does it prove? Does it prove, that because they have violated, we also may violate? Does it not prove directly the contrary? Is it not the strongest reason on earth for preserving the independence of our tribunals? If it be true, that they have, with strong hand, seized their courts, and bent them to their will, ought we not to give suitors a fair chance for justice in our courts, or must the suffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain cases which he considers as forming necessary exceptions to the principles for which we contend. Permit me to say, that necessity is a hard law, and frequently proves too much; and let the gentleman recollect, that arguments, which prove too

much, prove nothing. He has instanced a case where it may be proper to appoint commissioners, for a limited time, to settle some particular description of controversies. Undoubtedly it is always in the power of Congress to form a board of commissioners for particular purposes. He asks, are these inferior courts, and must they also exist forever? I answer, that the nature of their offices must depend on the law by which they are created; if called to exercise the judicial functions designated by the constitution, they must have an existence conformable to its injunctions.

Again, he has instanced the Mississippi Territory, claimed by and which may be surrendered to the state of Georgia; and a part of the union, which may be conquered by a foreign enemy. And he asks triumphantly, are our inferior courts to remain after our jurisdiction is gone? This case rests upon a principle so simple, that I am surprised the honorable member did not perceive the answer in the very moment when he made the objection. Is it by our act that a country is taken from us by a foreign enemy? Is it by our consent that our jurisdiction is lost? I had the honor, in speaking the other day, expressly, and for the most obvious reasons, to except the case of conquest. As well might we contend for the government of a town swallowed up by an earthquake.

[Mr. Mason explained: he had supposed the case of territory conquered, and afterwards ceded to the conqueror, or some other territory ceded in lieu of it.]

The case is precisely the same: until after the peace the conquest is not complete. Every body knows, that until the cession by treaty, the original owner has the postliminary right to a territory taken from him. Beyond all question, where Congress are compelled to cede the territory, the judges can no longer exist, unless the new sovereign confer the office. Over such territory the authority of the constitution ceases, and of course the rights which it confers.

It is said, the judicial institution is intended for the

benefit of the people, and not of the judge; and it is complained of, that in speaking of the office, we say it is his office. Undoubtedly the institution is for the benefit of the people. But the question remains, how will it be rendered most beneficial? Is it by making the judge independent, by making it his office, or is it by placing him in a state of abject dependence, so that the office shall be his to-day and belong to another to-morrow? Let the gentleman hear the words of the constitution: it speaks of their offices; consequently, as applied to a single judge, of his office, to be exercised by him for the benefit of the people of America, to which exercise his independence is as necessary as his office.

The gentleman from Virginia has on this occasion likened the judge to a bridge, and to various other objects; but I hope for his pardon, if, while I admire the lofty flights of his eloquence, I abstain from noticing observations which I conceive to be utterly irrelevant.

The same honorable member has not only given us his history of the supreme court, but has told us of the manner in which they do business, and expressed his fears that, having little else to do, they would do mischief. We are not competent, sir, to examine, nor ought we to prejudge, their conduct. I am persuaded they will do their duty, and presume they will have the decency to believe that we do our duty. In so far as they may be busied with the great mischief of checking the legislative or executive departments in any wanton invasion of our rights, I shall rejoice in that mischief. I hope, indeed, they will not be so busied, because I hope we shall give them no cause. But I also hope they will keep an eagle eye upon us lest we should. It was partly for this purpose they were established, and I trust, that when properly called on, they will dare to act. I know this doctrine is unpleasant: I know it is more popular to appeal to public opinion; that equivocal, transient being, which exists no where and every where. But if ever the occasion

calls for it, I trust that the supreme court will not neglect doing the great mischief of saving this constitution, which can be done much better by their deliberations, than by resorting to what are called revolutionary measures.

The honorable member from North Carolina, sore prest by the delicate situation in which he is placed, thinks he has discovered a new argument in favor of the vote which he is instructed to give. As far as I can enter into his ideas, and trace their progress, he seems to have assumed the position which was to be proved, and then searched through the constitution, not to discover whether the legislature have the right contended for, but whether, admitting them to possess it, there may not be something which might not comport with that idea. I shall state the honorable member's argument as I understand it, and if mistaken, pray to be corrected. He read to us that clause which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, observed that this clause must relate solely to a removal by the executive power, whose right to remove, though not, indeed, any where mentioned in the constitution, has been admitted in a practice founded on legislative construction.

That as the tenure of the office is during good behaviour, and as the clause respecting impeachment does not specify misbehaviour, there is evidently a cause of removal, which cannot be reached by impeachment, and of course, (the executive not being permitted to remove,) the right must necessarily devolve on the legislature. Is this the honorable member's argument? If it be, the reply is very simple. Misbehaviour is not a term known in our law; the idea is expressed by the word misdemeanor; which word is in the clause quoted respecting impeachments. Taking, therefore, the two together, and speaking plain old English, the constitution says, "The judges shall hold their offices so long as they shall demean themselves well; but if they shall misdemean. if they shall. on im-

peachment, be convicted of misdemeanor, they shall be removed." Thus, sir, the honorable member will find that the one clause is just as broad as the other. He will see, therefore, that the legislature can assume no right from the deficiency of either, and will find that this clause, which he relied on, goes, if rightly understood, to the confirmation of our doctrine.

Is there a member of this House, who can lay his hand on his heart, and say, that consistently with the plain words of our constitution, we have a right to repeal this law? I believe not. And if we undertake to construe this constitution to our purposes, and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wish to destroy the first magistrate, you can destroy him: and should he to-morrow be able to conciliate to himself the will of the people, and lead them to wish for your destruction, it is easily effected. Adopt this principle, and the whim of the moment will not only be the law, but the constitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her servants. But why is she in that situation? Is it not because popular opinion was called on to decide every thing, until those who wore bayonets decided for all the rest? Our situation is peculiar. At present, our national compact can prevent a state from acting hostilely towards the general interest. But let this compact be destroyed, and each state becomes instantaneously vested with absolute sovereignty. Is there no instance of a similar situation to be found in history? Look at the states of Greece. They were once in a condition not unlike to that in which we should then stand. They treated the recommendations of their Amphictyonic council, (which was more a meeting of ambassadors than a legislative assembly,) as we did the resolutions of the old Congress. Are we wise? So were they. Are we valiant? They also were brave.

Have we one common language, and are we united under one head? In this also there was a strong resemblance. But by their divisions, they became at first victims to the ambition of Philip, and were at length swallowed up in the Roman empire. Are we to form an exception to the general principles of human nature, and to all the examples of history? And are the maxims of experience to become false when applied to our fate?

Some, indeed, flatter themselves, that our destiny will be like that of Rome. Such indeed it might be, if we had the same wise, but vile aristocracy, under whose guidance they became the masters of the world. But we have not that strong aristocratic arm, which can seize a wretched citizen, scourged almost to death by a remorseless creditor, turn him into the ranks, and bid him, as a soldier, bear our eagle in triumph round the globe! I hope to God we shall never have such an abominable institution. But what, I ask, will be the situation of these states, (organized as they now are,) if, by the dissolution of our national compact, they be left to themselves? What is the probable result? We shall either be the victims of foreign intrigue, and split into factions, fall under the domination of a foreign power, or else, after the misery and torment of civil war, become the subjects of an usurping military despot. What but this compact, what but this specific part of it, can save us from ruin? The judicial power, that fortress of the constitution, is now to be overturned. Yes, with honest Ajax, I would not only throw a shield before it, I would build around it a wall of brass. But I am too weak to defend the rampart against the host of assailants. I must call to my assistance their good sense, their patriotism and their virtue. Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride, or roused your resentment? Have I conjure you, the

magnanimity to pardon that offence. I entreat, I implore you, to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin. Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will, which has brought us frail beings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained: I stand in the presence of Almighty God, and of the world; and I declare to you, that if you lose this charter, never! no, never will you get another! We are now, perhaps, arrived at the parting point. Here, even here, we stand on the brink of fate. Pause—Pause—For Heaven's sake, Pause!!

SPEECH OF WILLIAM B. GILES,

ON

THE JUDICIARY BILL,

**DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED
STATES, FEBRUARY 18, 1802.**



The bill proposed, that "the act of Congress, passed on the 13th of February, 1801, entitled an act to provide for the more convenient organization of the courts of the United States," and also, "an act passed on the 3d of March, 1801, for altering the times and places of holding certain courts therein mentioned, and for other purposes," should be repealed. It also provided, that all the acts in force before the passage of the aforesaid acts, and which, by the same, were either amended, explained, altered or repealed, should be revised. The bill contained further provision for the disposition of the actions, writs, &c. then pending in any of the courts of the United States, which were established by the aforesaid act of Congress of 1801.

In committee of the whole, Mr. Giles spoke as follows :

MR. CHAIRMAN,

I FEEL some degree of apprehension, that in the course I deem it necessary to take in the discussion of this question, some observations may fall from me which may not be in strict harmony with the feelings of some gentlemen of the committee. I shall regret, however, if a compliance with a sense of duty shall produce this effect. I wish, therefore, to apprise gentlemen, that I intend to direct my observations, as much as possible, to the effects and tendencies of measures; and that when I am constrained to speak of the views of gentlemen, it will be with respect to what I conceive to be their opinions in relation to the general interests, and not to private gratifications. It is natural that

men should differ in the choice of means to produce a given end, and more natural that they should differ in the choice of political means than any other ; because the subject presents more complicated and variable objects, out of which to make a choice. Accordingly, a great portion of the human mind has been at all times directed towards monarchy, as the best form of government to enforce obedience and ensure the general happiness ; whereas, another portion of the human mind has given a preference to the republican form, as best calculated to produce the same end : and there is no reason for applying improper motives to individuals who give a preference to either of the principles, provided in doing so they follow the honest dictates of their own judgments. It must be obvious to the most common observer, that from the commencement of the government of the United States, and perhaps before it, a difference of opinion existed among the citizens, having more or less reference to these two extreme fundamental points, and that it manifested itself in the modification or administration of the government as soon as it was put in operation. On one side it was contended, that in the organization of the constitution, a due apportionment of authority had not been made among the several departments ; that the legislature was too powerful for the executive department ; and to create and preserve a proper equipoise, it was necessary to infuse into the executive department, by legislation, all artificial powers compatible with the constitution, upon which the most diffusive construction was given ; or, in other words, to place in executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his constitutional responsibility to the people. On the other side, it was contended, that the doctrine of patronage was repugnant to the opinions and feelings of the people ; that it was unnecessary, expensive and oppressive, and that the highest energy the government could possess, would

flow from the confidence of the mass of the people, founded upon their own sense of their common interests. Hence, what is called party in the United States, grew up from a division of opinion respecting these two great characteristic principles—patronage, or the creation of partial interest for the protection and support of government, on the one side; on the other side, to effect the same end, a fair responsibility of all representatives to the people; an adherence to the general interests, and a reliance on the confidence of the people at large, resulting from a sense of their common interests. A variety of circumstances existed in the United States, at the commencement of the government, and a great number of favorable incidents continued afterwards to arise, which gave the patronage system the preponderancy, during the first three presidential terms of election; notwithstanding it was evident, that the system was adopted and pursued in direct hostility to the feelings and opinions of a great portion of the American people. The government was ushered into operation under a vast excitement of federal fervor, flowing from its recent triumph on the question of adopting the constitution. At that time, a considerable debt was afloat in the United States, which had grown out of the revolutionary war. This debt was of two kinds: the debt proper of the United States, or engagements made by the United States, in their federal capacity; the other, the state debts, or engagements entered into by the respective states for the support of the common cause.

The favorers of the patronage system readily availed themselves of these materials for erecting a monied interest; gave to it a stability, or qualified perpetuity, and calculated upon its certain support in all their measures of irresponsibility. This was done not only by funding the debt proper of the United States, but by assuming the payment of the state debts, and funding them also; and it is believed, extending the assumption beyond the actual engagements of the states.

Hence the federal axiom, that the public debt is a public blessing. Shortly after this event, an Indian war sprang up, I will not say by what means; in consequence of which, an army was added to the list of patronage. The Algerines commenced a predatory war upon the commerce of the United States, and thence a navy formed a new item of patronage. Taxes became necessary to meet the expenses of this system, and an arrangement of internal taxes, an excise, &c. &c. still swelled the list of patronage. But the circumstance, which most favored this system, was the breaking out of a tremendous and unprecedented war in those countries of Europe with which the United States had the most intimate relations. The feelings and sympathies of the people of the United States were so strongly attracted by the tremendous scenes existing there, that they considered their own internal concerns in a secondary point of view. After a variable conduct had been pursued by the United States in relation to these events, the depredations committed upon commerce, and the excitements produced thereby, enabled the administration to indulge themselves in a more decisive course, and they at once pushed forward the people to the X. Y. Z. of their political alphabet, before they had well learned and understood the A. B. C. of the principles of the administration.

Armies and navies were raised, and a variety of other schemes of expense were adopted, which placed the administration in the embarrassing predicament, either to violate their faith with their public creditors, or to resort to new taxes. The latter alternative was preferred, accompanied with other strong coercive measures to enforce obedience. A land tax was laid for two millions of dollars. This measure awakened the people to a sense of their situation, and shook to the foundation all those federal ramparts which had been planned with so much ingenuity, and erected around the executive with so much expense and labor. Another circumstance peculiarly favora-

ble to the advocates of executive patronage, was, that during the two first presidential terms, the chief executive magistrate possessed a greater degree of popularity and the confidence of the people than ever was, or perhaps ever will be again attached to the person occupying that dignified station. The general disquietude which manifested itself, in consequence of these enterprising measures, in the year 1800, induced the federal party to apprehend that they had pushed their principles too far, and they began to entertain doubts of the result of the presidential election, which was approaching. In this state of things it was natural for them to look out for some department of the government, in which they could entrench themselves in the event of an unsuccessful issue in the election, and continue to support those favorite principles of irresponsibility which they could never consent to abandon.

The judiciary department, of course, presented itself as best fitted for their object, not only because it was already filled with men who had manifested the most indecorous zeal in favor of their principles, but because they held their offices by indefinite tenures, were not subject to periodical appointments, and of course were further removed from any responsibility to the people, than either of the other departments. Accordingly, on the 11th of March, 1800, a bill for the more convenient organization of the courts of the United States, was presented to the House of Representatives. This bill appears to have had for its objects, first, the gradual demolition of the state courts, by increasing the number, and extending the jurisdiction of the federal courts. Second, to afford additional protection to the principles of the then existing administration, by creating a new corps of judges of concurring political opinions. This bill, however, was not passed into a law during that session of Congress, perhaps from an apprehension, that it would tend to increase the disquietudes which other measures had before excited, and therefore operate unfavorably to the approaching

presidential election. At the next session, after the result of the late election was ascertained, the bill, after having undergone some considerable alterations, was passed into the law now under discussion. This law, it is now said, is inviolable and irrepealable. It is said, the independence of the judges will be thereby immolated. Yes, sir, this law is now considered as the sanctuary of the principles of the last administration, and the tenures of the judges as the horns of inviolability within that sanctuary. We are now called upon to rally around the constitution as the ark of our political safety. Gentlemen, discarding all generalizing expressions, and the spirit of the instrument, tie down all construction to the strict letter of the constitution. It gives me great pleasure to meet gentlemen on this ground; and the more so because I have long been in the habit of hearing very different language from the same gentlemen. I have long been in the habit of hearing the same gentlemen speak of the expressions of "the common defence and general welfare," as the only valuable part of the constitution; that they are sufficient to obliterate all the specifications, and the limitations of power. That the constitution is a mere nose of wax, yielding to every impression it receives. That every "opening wedge," which is driven into it, is highly beneficial, in severing asunder the limitations and restrictions of power. That the republicanism it secures, means any thing or nothing. It gives me, therefore, great pleasure at this time, to obey the injunctions of gentlemen in rallying round the constitution as the ark of our political safety, and of interpreting it by the plain and obvious meaning and letter of the specified powers. But, as if it is always the unfortunate destiny of these gentlemen to be upon extremes, they have now got round to the opposite extreme point of the political compass, and even beyond it. For, they not only tie down all construction to the letter of the instrument, but they tell us, that they see, and call upon us also to see written therein, in large

capital characters, "the indefinite independence of judges;" which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, or in any other political establishment, I believe, under the sun. I rejoice that this subject is now to be discussed, and I think the crisis peculiarly auspicious for the discussion. The European world, with which the United States have the most relations, is now tranquilized. The tremendous scenes of blood and revolution, which have agitated that portion of the globe, have at length subsided into profound peace; and have left mankind, in silent amazement, to retrospect the wonderful events which are passed; and I hope, with calm deliberation, to improve the lessons they have furnished for the benefit of mankind in time to come. The interests and sympathies, which the people of the United States felt in these events, no longer turn their attention from their own internal concerns; arguments of the highest consideration for the safety of the constitution, and the liberty of the citizens, no longer receive the short reply, French partizans! Jacobins! Disorganizers! And although the gentleman from North Carolina, sees, or thinks he sees, the destructive spirit mount in the whirlwind and direct the storm, let him be consoled by the information, "that all these our actors are mere spirits and are dissolved into thin air." Yes, sir, these magical delusions are now vanished, and have left the American people and their Congress, in their real persons, and original American characters engaged in the transaction of American concerns.

Upon taking a view of our internal situation, although party rage may not be done away, it may be said, its highest paroxysm is past. And although the gentleman from New York, (Mr. T. Morris,) yesterday observed, that the President had commenced a system of persecution, so ignorant am I of the existence of such a system, that I cannot conceive to what the gentleman alluded. It is some time, Mr. Chairman.

since a member of this House, and sundry printers throughout the United States, were amerced and imprisoned to appease the vengeance of an unconstitutional sedition act, merely for publishing their own sentiments, which happened to be unpalatable to the then existing administration! It is some time, sir, since we have seen judges, who ought to have been independent, converted into political partizans, and like executive missionaries, pronouncing political harangues throughout the United States! It is some time, sir, since we have seen the zealous judge stoop from the bench to look out for more victims for judicial vengeance! It is some time, since we have seen the same judicial impetuosity drive from the bar the most respectable counsel, who humanely proposed to interpose between a friendless and unprotected man and the judicial vengeance to which he was doomed! It is some time, sir, since we have seen the same judicial zeal extending the provisions of the sedition act, by discovering that it had jurisdiction of the *lex non scripta*, or common law! It is some time, since we have seen the chief executive magistrate dooming to humiliation, 'in dust and ashes,' a great portion of the American people! Yes, sir, these terrific scenes are past. These noisy declamations, and this judicial zeal, are hushed into silence by the audible pronunciation of the public will. We may even indulge the hope, Mr. Chairman, that our pulpits will not much longer be converted into political forums; and that the meek and humble teachers of the christian faith, instead of stirring up all the angry and destructive passions of the human mind, will ere long once more condescend to teach those precepts of humility, forbearance and toleration, taught them by their divine preceptor. Those precepts so essential to the discovery of truth, by pre-disposing the mind to deliberation and reflection.

The present executive, pursuing the general good, and supported by the general confidence, stands not in

need of these artificial aids. He invites inquiry. He knows, that the highest encomium, which can be bestowed upon his administration, would flow from a correct understanding of his motives and his conduct. Instead of calling in the aid of sedition acts to the defamatory scribblers, who appear to increase in numbers, and in impudence, in proportion to the desperation of their cause, and their security from punishment, he has said, "let them stand undisturbed, as monuments of the safety, with which error of opinion may be tolerated, where reason is left free to combat it." Under these auspicious circumstances, I proceed to the discussion of the important question before us with pleasure, conscious that I am subject to error, and knowing, that if I do err, it is my interest to be corrected; confident also, that there is a mass of intelligence and calm reflection at this time in the people of the United States, competent to detect the error, and apply the corrective. Impressed with these sentiments, I differ widely in opinion with the gentleman from North Carolina, (Mr. Henderson,) who said, "that if the bill upon your table should pass into a law, he would not heave a sigh or drop a tear upon the instantaneous demolition of the whole constitution; the sooner it was done the better." Sir, this gentleman, and his associates in political opinions, have termed themselves "lovers of order." Is this an evidence of the practice we are to expect from those gentlemen, under their professions, so long and so loudly made to the people of the United States? Cannot that gentleman find some reason to regret that sentiment, in the confidence due to the intelligence and patriotism of a great portion of his fellow-citizens, who differ with him on that point? Or do the gentleman, and his political associates, claim, with presumptuous vanity, not only the appellation of the exclusive "lovers of order," but also the monopoly of all the intelligence and patriotism of the nation? I have too much respect for gentlemen. to suppose they will

place their pretensions on this ground. I beg pardon of the committee for this digression: I have been impelled to it from the course the debate has taken, and particularly from the indecorous attacks made on the President of the United States.

I will now proceed to examine, whether the repeal of the judiciary law of the last session of Congress, would in any respect violate that salutary and practicable independence of the judges, which is secured to them by the constitution. The term, independence of judges, or of the judiciary department, is not to be found in the constitution. It is, therefore, a mere inference from some of the specified powers; and I believe in the meaning of gentlemen, and to the extent they carry it, the term is not to be found either in the spirit, general character, or phraseology of any article or section of the constitution. I mean to give the constitution the most candid interpretation in my power, according to the plain and obvious import of the English language. I shall discard, in my interpretation, the terms "common defence and general welfare," which have been resorted to by some gentlemen. I consider these words as containing no grant of power whatever, but merely the expression of the ends or objects to be effected by the grants of specified powers. I therefore protest against drawing any aid whatever from them, in my construction of the instrument. I have read through the whole constitution, to enable me to form my opinion upon this question, for fear there might be, in some hidden corner of it, some provision, which might demonstrate the unconstitutionality of the present bill; and if so, although I should lament such a provision, I would instantly give up the bill. But my researches have terminated in a different result. I find from the general character of the constitution, that the general will was its basis, the general good its object, and the fundamental principle for effecting this object is the responsibility of all public agents, either mediately or immediately to the peo-

ple. The context of the constitution demonstrates the two first points, which I will read.

“ We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.”

Here we find the constitution founded upon the will of the people; and the object declared to be the good of the people. Through the whole body of the constitution may be discerned the responsibility of all public agents, either mediately or immediately, to the people. This responsibility results, first, from the division of authority into different departments; second, from a specification and limitation of the authorities of all and each of the departments; third, from periodical appointments of the public agents. The first clause declares there shall be a Congress, to whom the business of legislation is confided. This Congress is to consist of a House of Representatives to be chosen by the people immediately, and responsible to them at the end of every two years; and a senate, to be chosen by the legislatures of the different states, who are chosen by the people; one third of the senators to be chosen every two years, and responsible at the end of every six years. The executive power is vested in a President, who is chosen by electors, who are chosen for the express purpose by the people, and responsible at the end of every four years. The President may be considered as immediately responsible to the people, although chosen through the medium of electors: because it is found in practice that the electors are constrained to avow the vote they intend to give before they are chosen, and the people have generally made their elections with a view to that object.

Thus, then, are formed two departments, their powers specified and defined, the times for extending their

powers fixed, and indeed a complete organization for the execution of their respective powers without the intervention of any law for that purpose. A third department, to wit, the judiciary department, is still wanting. Is that formed by the constitution? How is that to be formed? It is not formed by the constitution. It is only declared, that there shall be such a department; and it is directed to be formed by the other two departments, who owe a responsibility to the people. Here there arises an important difference of opinion between the different sides of this House. It is contended on one side, that the judiciary department is formed by the constitution itself. It is contended on the other side, that the constitution does no more than to declare, that there shall be a judiciary department, and directs, that it shall be formed by the other two departments, under certain modifications. Article third, section first, the constitution has these words: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish." Here then the power to ordain and establish inferior courts is given to Congress in the most unqualified terms, and also to ordain and establish 'one supreme court.' The only limitation upon the power of Congress in this clause, consists in the number of supreme courts to be established; the limitation is to the number of one, although that is an affirmative and not a negative expression. The number of judges, the assignment of duties, the fixing of compensations, the fixing of the times when, and places where, the courts shall exercise their functions, &c. are left to the entire discretion of Congress. The spirit, as well as the words of the constitution, are completely satisfied, provided one supreme court be established. Hence, when all these essential points in the organization and formation of courts is intrusted to the unlimited discretion of Congress, it cannot be said that the courts are formed by the constitution.

For further restraints, therefore, upon the discretion of Congress, the remaining part of the same section must be consulted. Here I beg leave to remark, that I have often felt a veneration for the wisdom of the sages who formed this constitution. Considering the difficulties they had to encounter, resulting from the various local prejudices and local interests of the different parts of the United States, and the vast variety of opinions which the subject presented, it is almost wonderful to conceive how they should have hit upon a system so admirably calculated to protect and to promote the general interests, when administered according to its original meaning and intention. I cannot go so far as to say it is perfect. I admit, like other human productions, it is stamped with the common fallibility of man; I wish, however, to see no radical changes in its principles. I wish to hand it down to posterity with those amendments only which experience shall suggest, and which will grow out of the continually varying state of the nation. It is not only remarkable for the wisdom of its arrangements, but the correct and technical mode of expression. The part of the section now to be examined, is an example of the justice of both these remarks. The words are, "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

The first part of this sentence respects the relationship between the executive and the judiciary departments: it respects judges or officers of the courts, who are appointed by the President. The last part of the sentence respects the relationship between the legislative and judiciary departments; it respects the creation of offices, the fixing of the compensation of the officers or judges, and their continuance in office. These are the peculiar attributes of the legislative department. Accordingly, the most correct and technical

words are used in relation to both these objects. The term, "hold their offices during good behaviour," relates merely to the executive department. The term, *hold*, is the common technical word used to convey the idea of tenure. Tenure requires two parties. The one granting, the other holding or receiving the grant. Let the inquiry be made, of whom do the judges hold? The constitution furnishes the answer—of the President. One of the most obvious rules in the construction of instruments of writing is, that the whole of it must be taken together, and not one particular part by itself. The following words will be found in the second section of the second article of the constitution. "And he (to wit, the President,) shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." In the third section of the same article, are these words: "And shall (to wit, the President,) commission all the officers of the United States." These three sentences contain the relationship between the executive and judiciary departments, so far as respects the objects of the present discussion.

To ascertain the real meaning and import of these sentences, they should be read in connexion with each other, excluding therefrom all intermediate words not immediately bearing on the subject. In that case, the constitution would read thus: "He (to wit, the President,) shall nominate and appoint the judges of the supreme court, and all other officers of the United States, and shall commission all the officers of the United States. The judges both of the supreme and inferior courts shall hold their offices during good behaviour." It may be now asked, if this case of the judges of the supreme and inferior courts be not an obvious exception out of the general presidential discretion of appointing and commissioning all officers of the United

States during pleasure? After the government has been in operation above twelve years, and the principle of commissioning all executive officers during pleasure, has been practised upon during the whole of the period by the executive, as well as the legislative department, the propriety of that practice is for the first time now become questionable. It is said that the right to commission during pleasure, is by implication. It is readily admitted, that there are no express words in the constitution to that effect; but the inference, from the words which are there, is almost as strong as the words themselves, if they had been inserted. The President is authorized, without limitation, to "commission all the officers of the United States." The question arises, by what tenure? The reply is, according to his pleasure or discretion. It was not difficult to foresee, that if the President was fully empowered to commission as he pleased, he would please to commission during his pleasure. The legislature has no more control over an officer who holds an executive commission during the pleasure of the President, than over a judicial officer holding his office during good behaviour. The remedy given by the constitution being the same in both cases, to wit, impeachment. Nor is there any reason, why the office of the one should be less subject to the discretion of the legislature, than the office of the other; and it seems to be universally agreed, that although the legislature cannot deprive an executive officer of his office in any other way than by impeachment during the continuance of such office, yet the office itself is always subject to be abolished. The same reasoning will hold with equal force respecting a judge and a judicial office. The reason why the executive is proscribed from the removal of a judge, is to secure to the judge the complete independence of the President, who is not responsible for the discharge of judicial duties; but the removal is perfectly correct in the case of an executive officer, because the President is highly responsible for the due discharge of

executive duties. The legislature is not responsible for either, and of course stands in the same constitutional relation to both. This appears obvious from furnishing to the legislature the same means of removing both, as will appear by the fourth section of the second article, in the following words: "The President, vice president, and all civil officers of the United States, shall be removed from office by impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors." I now beg leave to call the attention of the committee particularly to the last clause of the sentence, which ascertains the constitutional connexion between the legislative and judicial departments, so far as it respects the limitation of the legislative, in the exercise of the power committed to it, for the organization of the judicial department. I shall place particular emphasis on these words of the constitution in the exposition I propose to make. The words are, "and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office." The first part of this section having given to Congress the power of creating courts, ascertaining the number of judges, &c. these last words may be considered as containing explanations and limitations of the general power of Congress, as is the foregoing part of this sentence a limitation of the general executive power. And accordingly, the most correct terms are used for limiting legislative discretion, and explaining its objects; according to the words of this sentence, the judge is to receive a compensation for his services. To whom are these services to be rendered? To the people, for the benefit of the people. Who is to judge of the necessity or utility of these services? The constitution has ordained, that Congress, or in other words, the representatives of the people, shall be the tribunal. Suppose there should be no services required, none for the judge to perform, and that Congress should so think and determine: is the judge entitled to compen-

sation? He is not. The condition of service for the benefit of the people, is the express consideration upon which the compensation accrues. No service is rendered, the competent tribunal says, there is none required, of course, no compensation accrues. The judge is entitled to receive none. On this point, an obvious and most important difference of opinion exists between the two sides of the committee. On one side, it is contended, that the office is the vested property of the judge, conferred on him by his appointment, and that his good behaviour is the consideration of his compensation; so long, therefore, as his good behaviour exists, so long his office must continue in consequence of his good behaviour, and that his compensation is his property in virtue of his office, and therefore cannot be taken away by any authority whatever, although there may be no service for him to perform. On the other side, it is contended, that the good behaviour is not the consideration upon which the compensation accrues, but services rendered for the public good; and that if the office is to be considered as a property, it is a property held in trust for the benefit of the people, and must therefore be held subject to that condition, of which Congress is the constitutional judge. Considering the boundary line between these conflicting opinions to be the boundary line between offices held for public utility, and offices held for personal favor, I cannot bestow too much attention upon this part of the discussion; for if the construction, gentlemen contend for, should prevail, in vain have the framers of the constitution, with so much jealous circumspection, erected so many ramparts against the introduction of some of these offices in the government of the United States. A sinecure office is an office held without the condition of service; often for past services already compensated; often for present favor, without the condition of any service. For the purpose of excluding from the federal government all sinecure offices, the sages, who formed the constitution, have, through every part of

it, connected services and compensation, and they ought never to be separated in construction. The sixth section of the first article is in these words: "The senators and representatives shall receive a compensation for their services, to be ascertained by law," &c. and so far has this principle of the rendition of service been carried, that the service of the senate and representatives is to be rendered every day, and unless they do daily render service, they are not entitled to their day's compensation. In the first section of the second article of the constitution, are these words, "the President shall, at stated times, receive for his services a compensation," &c.; in the first section of the third article, are these words, "and shall, (to wit, the judges shall,) at stated times, receive for their services a compensation," &c. In the forty-first section of the act, under which the judges claim their compensation, are these words, "that each of the circuit judges of the United States, to be appointed by virtue of this act, shall be allowed as a compensation for his services," &c. These expressions all demonstrate the importance of coupling the service and compensation of office. But the jealous caution of the framers of the constitution did not stop at choosing the best affirmative expression for excluding this doctrine of sinecure offices; they also applied negative restraints.

In the ninth section of the first article of the constitution, are these words, "No money shall be drawn from the treasury but in consequence of appropriations made by law." In the same section, "No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince or foreign state." If, then, services rendered for the public benefit, be the essential consideration, upon which the compensation does accrue to the judges; if the Congress be the proper tri-

bunal for pronouncing upon the necessity or utility of such service, and if they decide, that no such service is necessary or useful; the judge sustains no injury in not receiving the compensation; because he does not comply with the condition on his part, nor does he sustain a hardship thereby; because it must be presumed, that he understood the conditions attached to his office, at the time of his acceptance. It has been admitted by all gentlemen, that Congress is the constitutional tribunal for deciding, respecting the services to be performed. They admit, that Congress may modify the courts, diminish or add to their duties, alter the terms of their sessions, or make any other arrangements respecting them which do not go to take away or diminish their compensations. It is to be observed, that there is not one of these powers specified in the constitution; they are, therefore, necessary inferences from the paramount power "to ordain and establish," and the power of repeal, or to take away all the services to be performed, is as necessary an inference as either of the others, and has uniformly resulted from every other specified power in the constitution. From this part of the sentence, therefore, it is deducible, that the only restraint upon the general power given to Congress in the first part of the section, to ordain and establish courts, is, that the compensations of the judges shall not be lessened during their continuance in office; not during their good behaviour. And in this part of the sentence, the correct phrasology of the constitution is worthy of observation. In speaking of the executive attribute, (to wit,) the appointing and commissioning of officers, the term, good behaviour, is used. In speaking of the legislative attribute, (to wit,) the creation of offices and fixing compensations, the term, during their continuance in office, is used. The reason for this variation of expression is obvious. It was known, that the office might be discontinued, and the judge continue to behave well; the limitation was therefore applied to the office, and not the good beha-

viour, because, if the office should be discontinued, which is clearly implied in this expression, it was not the intention of the constitution, that the compensation should be received; no service, in that event, being to be rendered. From this interpretation of the constitution, all the departments are preserved in the due exercise of their respective functions for the general good, without any of the mischievous and absurd consequences resulting from the opposite construction. It is admitted, that the first part of this section expressly vests Congress with the general power to ordain and establish courts; and if there had been no other restriction, the consequent power to unordain, or abolish. The restriction relied upon is not a restriction in express words; there are no words in the constitution prohibiting Congress from repealing a law for organizing courts: the restraint contended for, therefore, is by implication, and that implication, to say the least, not expressly connected with any legislative attribute. Is it right, is it a correct interpretation, that when a power is given in express words, for the most important purposes, it should be restrained or prohibited by implication? Can so much inattention and folly be attributed to the framers of the constitution, as would result from the supposition, that, if it was their intention, that a law growing out of one of the specified powers, in contradistinction to all others, should be irrepealable when once passed, so extraordinary a principle would be left to mere implication? Such a supposition would be the highest injustice to the superior intelligence and patriotism of those gentlemen, manifested in every other part of the instrument. No, sir, they would have made notes of admiration; they would have used every mark, adopted every caution, to have arrested and fixed the attention of the legislature to so extraordinary a principle.

They would have said, legislators! Be circumspect! Be cautious! Be calm! Be deliberate! Be wise! Be wise not only for the present; but be wise for posteri-

ty! You are now about to tread upon holy ground. The law you are now about to pass, is irrevocable! Irrevocable! We are so enamored with the salutary and practicable independence of the English judiciary system, that in infusing its principle into our constitution, we have stamped it with the proverbial folly of the Medes and Persians! If this principle had been introduced into the constitution in express words, it would have formed an unfortunate contrast to all other parts of the instrument; yet gentlemen make no difficulty in introducing that principle by construction, which would have appeared so stupid and absurd, if written in express words in the body of the instrument. But there is no such language in the constitution. Let us see what is the language of that instrument. "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may, from time to time, ordain and establish." Here, then, instead of cautioning the legislature, that a law for the organization of courts, when passed, can never be repealed, it contains an invitation to a revision, from time to time. It contains an intimation, that the subject is new and difficult, and an injunction to ordain and establish your courts, from time to time, according to the results, which an experience of the system alone could suggest. The gentleman from Pennsylvania, (Mr. Hemphill,) observed, that the character of irrevocability is not exclusively attached to this law, and attempted to furnish instances of other laws of the same character. He instanced a law for the admission of a new state into the union.

The gentleman from Kentucky, (Mr. Davis,) has given a proper reply to that remark; the strongest instance the gentleman gave, was of a law executed. After the new state is admitted into the union, in virtue of a law for that purpose, the object of the law is answered. The state admitted has no stipulated duties to perform on its part, no services to render; in

the case before the committee, the law is in a state of execution, and the judges have services to render on their part, which the competent tribunal may determine to be neither useful nor necessary. A law for the appropriation of money to a given object, may be adduced as an instance; the money is applied; its object is answered; the law may be said to be irrepealable, or, in other words, the repeal would produce no effect. That is not the case of the law in question. I have no doubt but that the framers of the constitution had particular reference to the British act of parliament of William the Third, for the establishment of the independence of the judges in that country, in framing the section for the establishment of the judicial department in the United States; and it is not a little remarkable, that whilst gentlemen, in one breath, speak of the independence of the English judges, as the boast and glory of that nation, in the next breath they tell us, that by the repeal of the present act, the independence of the judges here would be immolated. Let this subject be examined: In the third chapter of the first book of Blackstone's Commentaries, the independence of the English Judiciary is fully explained. I beg leave to read the exposition of that commentator on this subject.

“ And, in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute, 13 W. III. c. 2, that their commissions shall be made, (not, as formerly, *durante bene placito*, but,) *quam diu bene se gesserint*, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both houses of parliament. And now, by the noble improvements of that law in the statute of Geo. III. c. 23, enacted at the earnest recommendation of the king himself from the throne, the judges are continued in their offices during their good behaviour; notwithstanding any demise of the crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolute-

ly secured to them during the continuance of their commissions; his majesty having been pleased to declare, that 'he looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects; and as the most conducive to the honor of the crown.'"

Now, sir, under the doctrine contended for by the repeal of this law, let us see whether the judges of the United States are not more independent than the judges of England. In the first place, Congress have the power of originating, abolishing, modifying, &c. the courts here. The parliament in England have the same power there. Congress cannot remove a judicial officer from his office so long as the office itself is deemed useful, except by impeachment, the consent of two thirds of the senate being necessary to a conviction. In England, judges can be removed from their offices, although the offices may be deemed useful, by an address of a majority of the two houses of parliament. Here then, is one essential advantage in favor of the independence of the judges of the United States. Congress cannot diminish the compensation of the judges here during their continuance in office. In England, the parliament may diminish the compensation of the judges at their discretion, during their continuance in office. Here then is another obvious advantage in favor of the independence of the judges of the United States; whence is it then, that we hear of the independence of the English judiciary, as being the boast and glory of that country, and with justice too, and at the same time hear the cry of the immolation of the independence of the judges of the United States, when under the interpretation of the constitution by the favorers of the repeal, the judges here are more independent than the English judges? It can have no other object than to excite a popular clamor, which, if excited at all, can have only a momentary effect, and will be dissipated as soon as the subject shall

be thoroughly examined and understood. But it appears to me, that if gentlemen really do value the independence of the judges, they have taken an unfortunate ground in the interpretation of the constitution. Under their construction, the judges may be placed not only in a dependent, but a ludicrous point of view. Gentlemen admit that Congress may constitutionally increase or diminish the duties of the judges; give or take away jurisdiction; fix the times of holding courts, &c. saving therefrom the salaries of the judges. Under this admission, Congress may postpone the sessions of the courts for eight or ten years, and establish others, to whom they could transfer all the powers of the existing courts. In this case, the judges would be held up to the people as pensioners receiving their money and rendering no service in return; or Congress might convert them into mere courts of *piepoudre*, assigning them the most paltry duties to perform, and keep them continually in session, in inconvenient places; whilst new courts could be erected to perform all the essential business of the nation. This would be taking down the high pretensions, assigned to the judges by the gentleman from North Carolina, (Mr. Henderson,) of being formed into a permanent corps, for the purpose of protecting the people against their worst enemies, themselves; and degrading them into pitiful courts of *piepoudre*, rendering little service and receiving large compensations. And this would be the case, if party purposes were the object, and not the general good. According to his construction, these absurd results could not take place, unless by a virtual breach of the constitution. Because, I contend, that service and compensation are correlative terms; and that there ought always to be a due apportionment of service to compensation. This I consider as the plain and sound interpretation of the constitution, and the moment it is departed from, infinite absurdities ensue. I intended to have taken another view of this subject, as it respects the relative influence of the law of the

last session, and the proposed repeal upon this question; but the gentleman from Massachusetts, (Mr. Bacon,) has put this subject in a so much stronger point of view than I could have done, that I would refer to his remarks thereupon, observing only that I have no doubt but that the law of last session, now proposed to be repealed, is, in every respect, as much opposed to the doctrine of gentlemen, as the contemplated repeal can be. The sections of the law particularly alluded to, are the twenty-fourth, in these words, "and be it further enacted, that the district courts of the United States, in and for the districts of Tennessee and Kentucky, shall be and are hereby abolished," and the twenty-seventh, in these words, "and be it further enacted, that the circuit courts of the United States, heretofore established, shall cease and be abolished."

I will now examine some of the consequences of the doctrine against the repeal, and see if it can be recommended from that consideration. First, as it respects the judicial department. Its first effect is to produce a perpetual increase of judges and salaries, without any practicable mode of reducing them. This is inconsistent both with the general sentiment of the people and the constitution, which requires, that no compensation shall be received, without an equivalent service rendered.

The gentleman from Pennsylvania supposes, that there would be as much danger, that a corrupt legislature would give an enormous sum, say two hundred thousand dollars, to one judge, as to appoint too great a number of judges. Yet he says, the legislature is restrained in express words from lessening the salary, and he infers from that circumstance, that it is also restrained from lessening the number of offices. I draw from it a direct contrary inference. If there be neither the power to lessen the sum nor abolish the office, there is no remedy for the evil the gentleman suggests. It is an incurable mischief. There is, therefore, a necessity for a power to abolish the office, as a remedy

against the enormous abuse of giving so large a sum without the rendition of equivalent service. And as express words were deemed necessary to limit the discretion of Congress against diminishing the sum, so would there have been greater necessity for express words to limit the discretion of Congress against the abolition of unnecessary offices.

According to a sound rule of interpretation, where a general grant of power is made, and one limitation to the general power is expressed, the expression of that limitation is an exclusion of all intention to make any other limitation whatever by inference or implication. And this rule will apply to all other cases put by gentlemen, where there is an express limitation of legislative authority. But the most important consequence from this doctrine is, that it erects the judges into a body politic and corporate, in perpetual succession, with censorial and controlling powers over the other departments. And for what purpose? The gentleman from North Carolina, (Mr. Henderson,) has informed us, "to protect the people against their worst enemies," themselves! This is the real exposition of the object in very few but emphatical words. As the inducement to the adoption of this principle, gentlemen have reminded us of the fate of a foreign country, of the violent passions which agitate popular assemblies, of the age, experience, the unassuming talents and unambitious virtue of judges. The judges were selected from their fellow-citizens, and I presume possess the same human propensities. All men love power, and in general, those love it best who know best how to use it. Let us apply this remark to the judges of the United States.

Very shortly after the establishment of the courts, the judges decided, that they had jurisdiction over the states in their sovereign capacity. Did this, in the judges, seem unambitious? The states thought it did not. It happened, that during the revolutionary war. the state of Massachusetts had issued certain ob-

ligatory bills, which were made transferable, and which were outstanding without any provision for their payment; suits were instituted on these bills. The court determined to bring the great state of Massachusetts, and not Virginia, on its knees, not at the feet of justice, but of policy. Upon the representation of Massachusetts, an amendment was made to the constitution of the United States, declaring that the constitution should not be construed to extend to authorizing the courts to arraign and pronounce judgment against states which had not consented to give up their sovereignty. Thus this unambitious project of the judges was prostrated by a constitutional interposition. The amendment is in the following words: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state." The judges have determined that they are judges in the last resort upon the constitutionality of your laws. I propose not to discuss this question, because I do not think it pertinent to the question before us. I only mention it to show their unlimited claims to power. The judges have determined that their jurisdiction extends to the *lex non scripta*, or rather to the *lex non descripta*, or common law. Does this, in the judges, seem unambitious? This law pervades the whole municipal regulations of the country. It is unlimited in its object, and indefinite in its character. Legalize this unassuming claim of jurisdiction by the judges, and they have before them every object of legislation. They have sent a mandatory process, or process leading to a *mandamus*, into the executive cabinet, to examine its concerns. Does this, in the judges, seem unambitious? Now, sir, examine and combine the extraordinary pretensions to power, legalize them, and you have precisely that body politic and corporate which gentlemen deem so important in the United States. "to protect the people from their worst ene-

mies—their selves !” I should not resort so frequently to this expression, but that I consider it as the candid and correct exposition of the object of gentlemen opposed to the repeal. It is the doctrine of irresponsibility against the doctrine of responsibility. The latter, I have endeavored to show, characterizes the constitution of the United States. It is the doctrine of despotism, in opposition to the representative system. It is an express avowal, that the people are incompetent to govern themselves. This, I believe to have been the great characteristic difference from the commencement of the administration of the government to the present day. If, indeed, there be a political corps necessary to interpose between the people and themselves, I consider the judiciary corps, supported by the doctrines on this floor, well calculated to effect that object.

I will now examine the consequences of the doctrine against the repeal, as it respects the legislature. It will have a direct tendency to impair the responsibility of the representatives to the people. I cannot illustrate this observation better than by giving the history of the law proposed to be repealed.

The first bill for changing the organization of the courts of the United States was reported to the House of Representatives the 11th of March, 1800; after undergoing some discussion and amendment, it was re-committed and reported again the 31st of March, 1800; on the 14th of April, it was postponed by a majority of two votes. At this time, the presidential election was approaching, and the result uncertain. The bill upon which the law in question was founded, was reported to the House of Representatives the 19th of December, 1800, and passed that House the 20th of January, 1801. It was read in the senate the 21st of January, 1801, and passed the 7th of February, 1801. At this time, the presidential election, so far as it respected the then existing President, was ascertained.

I propose to be particular in ascertaining the facts

respecting the passage of this law and its execution, because gentlemen have complained that rumors have gone into circulation respecting its passage, and the appointments under it, not warranted by the facts; a sense of justice has, therefore, induced me to make the strictest inquiry into the dates and facts, and the result of that inquiry, upon my mind, has been as unfavorable to its advocates, as any impression which had been made by the rumors complained of. At the time of passing the law, no complaints had been presented to Congress against the competency of the former system; not even a memorial from the bar of Philadelphia. I believe the former system to have been amply competent. The business, indeed, had very much declined; in the spring of 1799, the whole number of causes instituted, exclusive of Maryland and Tennessee, amounted to seven hundred and three, besides seventy-eight criminal prosecutions in Pennsylvania. In the fall of 1800, there were instituted only three hundred and fifty-five; without any information, however, on this point, the law was passed. On the 13th of February, 1801, it was approved by the President. On turning to the journals of that day, it will be found that the House of Representatives was not engaged in the ordinary business of the session. They were engaged in the extraordinary business of electing a President.

In a note made on that day on the journals, will be found a message from the President in these words: "A message was received from the President of the United States by Mr. Shaw, his secretary, notifying, that the President did this day approve and sign an act which originated in the House of Representatives, entitled "An act to provide for the more convenient organization of the courts of the United States." Upon examining the journals themselves, I find an entry in these words: "The time agreed upon by the last mentioned vote being expired, the states proceeded in manner aforesaid to the twenty-ninth ballot: and

upon examination thereof, the result was declared to be the same." Need I remind gentlemen, now present, who were agents in the existing scenes, of the extraordinary situation of Congress at that moment—when in the House of Representatives the ordinary business of legislation was suspended, a permanent session decreed; when lodging and subsistence were furnished the members within the walls of the chamber; when even a sick bed was introduced to enable its patient to discharge a sacred duty? Need I awaken the recollection of our fellow-citizens, who were looking, with indignant anxiety, on the awful scene; beholding their representatives, urged by the most tempestuous passions, and pushing forward to immolate the constitution of their country? No, sir, the awful scene is freshly remembered! And what was its object? To prevent the fair and known expression of the public will in the highest function it has to perform. In the choice of the chief executive magistrate of the nation. In this state of things, when all confidence amongst the members of this House was lost, in the highest paroxysm of party rage, was this law ushered into existence. And now its advocates gravely tell us to be calm, to guard against the danger of our passions. They tell us, at the same time, that the law they have passed is sacred! inviolable! irrepealable! Does it merit this extraordinary character from the circumstances which accompanied its passage? It does not.

Let us examine how this law was carried into effect. Members of the legislature, who voted for the passage of the law, were appointed to offices, not indeed created by the law, the constitution having wisely guarded against an effect of that sort, but to judicial offices previously created; by the removal of what was called the promotion of judges from offices they then held, to the offices newly created, and supplying their places by members of the legislature, who voted for the creation of the new offices. In this substitution, however, it appears, that no respect was paid to another

provision of the constitution. The sixth section of the first article of the constitution contains these words, "no senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office." If vacancies had existed in the previously existing judicial establishments, the appointments of the members of the legislature might not be considered as a direct breach of this provision in the constitution; but this was not the fact, no vacancies did exist. It was necessary, to make provision for members voting for the law, that vacancies should be made by the removal or promotion of the then existing judges. This was done under this authority in the constitution. Second section, second article, "he, (to wit,) the President of the United States, shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, and other public ministers and consuls, judges of the supreme court, and all other officers of the United States," &c.; again, "the President shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session." How did the then President exercise the power in the present case? He did not wait until the vacancies should happen. He attempted to make vacancies, by what he called the promotion of judges, although they held their commissions of him, 'during good behaviour,' and without waiting to know whether the judges would accept the promotion or not, upon which event alone a vacancy could accrue; he proceeded to appoint and actually commission members of the legislature to offices, then actually held by other commissions granted to other persons. What was the effect of this procedure? That two persons

held commissions to perform the same duties, although one person only was authorized by law to discharge those duties, whilst the office, where the promotion was refused, remained vacant. This was actually the case, in several of the districts of the United States. This subject will be put into a still stronger point of view, by examining the journals of the senate, which I am sorry to do for this purpose. When discussing the bill in question in the senate, I find this entry on their journals, "on motion to strike out the whole of the bill after the words (from and after,) section first, line second, for the purpose of inserting as follows, (to wit,) a substitute for the bill." On the question to agree to this motion, it passed in the negative—yeas, thirteen—nays, seventeen. I observe among the nays, the names of Mr. Green, of Rhode Island, and Mr. Read, of South Carolina. Both these gentlemen received appointments in virtue of the promotion of judges under this law. If these gentlemen had voted on the opposite side of the question, the law would never have been in existence. I mention this circumstance, not to impugn the motives of any gentleman, but to demonstrate the temptation held out to the members of the legislature, under the doctrine contended for against the repeal of this law. The refusal of the present President to correct what was called a mistake in Mr. Green's appointment, having excited some clamor, it is necessary to put this subject in a correct point of view. It seems, that in filling up Mr. Green's commission, the word "circuit," instead of the word "district," was inserted, it is presumed, by mistake. If the commission was intended for the circuit court, it was a breach of the constitution, in its most obvious letter. If it was intended for the district court, it was void *ab initio*; because, at the date of the commission, no vacancy had happened, and the President's right to appoint depended on that precedent condition, and he, therefore, in making the appointment, attempted to exercise a power he did not possess. It must be obvious to every gentleman, that

Mr. Green's accepting the commission, under all the incidents attending the case, could furnish but a negative recommendation of Mr. Green, in his application for that or any other appointment. Upon a review of the history of the law in question, according to the doctrine of its advocates, the temptation to the legislature to make permanent, irrevocable provision for themselves, must be obvious to every impartial observer. If, when a judicial establishment be once made, it becomes irrevocable, how easy would it be for a legislature, combined with the executive, to compensate themselves for the loss of the confidence of their constituents, by following the example before us? By erecting a new tier of judges, holding out to them additional emoluments, and by filling up the vacancies, occasioned by their promotion, with the members of the legislature.

This operation would be most likely to take place when the representatives had lost the confidence of their constituents, and of course less likely to be influenced by considerations of public good. Again, sir, the sinecure system thus established, would have the advantage of all other similar systems existing in the world; because, if in other countries the sinecure system has become oppressive to the people, they have the consolation to recollect, that the evil may be lessened by the competent authority; but, according to the doctrine, upon which the system is bottomed in the United States, no remedy can be applied to the mischief, by the union of all the responsible agents of the people. How, sir, would the framers of our constitution lament, after all the care and circumspection they have used to exclude this system entirely from the practical operation of the government, that the constitution itself should be made the instrument of its introduction, and its permanent, irrevocable establishment? And this too at the moment of an expiring administration; when the passions of men just parting from power, were breaking down every impediment which

stood in the way of attaining their object! Upon the whole, therefore, it appears, that this doctrine of the irrepealability of laws derives no consideration from the consequences which naturally flow from it.

Having exhausted so great a portion of the time and attention of the committee, in discussing the constitutional question, which has been made the cardinal point in the debate, I propose to confine myself to very few observations upon the expediency of the contemplated repeal. I take it for granted, that the former judicial system was competent to the discharge of all the judicial business in the United States; but if that should be denied, I think it demonstrable from the document before the committee. The gentleman from Delaware, (Mr. Bayard,) has intimated a doubt whether the President acted correctly, in favoring us with the document. I shall only observe in reply, that the constitution imposes a duty upon the President, from time to time, to give to Congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient. The number of suits in the courts of the United States must always be very small, from the limited objects of their jurisdiction; this will appear by reading the second section of the third article of the constitution, limiting their jurisdiction. The whole expense of the existing system is one hundred and thirty-seven thousand dollars, of which forty thousand or fifty thousand dollars may be attributable to the new system; the estimates differing between these two sums. Whether the expense be estimated, either according to the service to be rendered, or by comparison with any other system, it appears to me to be enormous. I have examined the document before us, by way of ascertaining the relative view of expense and service, and also the competency of the former system to the discharge of the business. I would not, however, be responsible for precise clerical accuracy, in my addition, which has also been deemed a subject

worthy of criticism against the President of the United States. But if it be within twenty-five *per centum* of being correct, it will demonstrate, first, that the former courts were competent to the business; second, that the number of causes bears no proportion to the expense of the institution.

I will present to the view of the committee, the whole number of causes instituted at the respective sessions of the courts, from the spring of 1796 to the spring of 1801. I have fixed upon the year 1796, because the business began then to increase under the influence of the British treaty.

In all the circuit courts of the United States, except Maryland and Tennessee, the whole number of causes, of every description, instituted in the spring of 1796, was two hundred and ninety-four; fall, one hundred and ninety-two—1797, spring, four hundred and eighty-one; fall, three hundred and ninety-seven—1798, spring, three hundred and twenty-five; fall, three hundred and ninety-seven—1799, spring, seven hundred and three, exclusive of ninety-eight criminal prosecutions in Pennsylvania; fall, four hundred and fifty-five—1800, spring, four hundred and fifty-one, seventy criminal prosecutions in Pennsylvania; fall, three hundred and fifty-five—1801, spring, three hundred and fifty. Making the common calculation of suits settled between the parties without trial, dismissions, abatements, &c. &c. and it will appear, that the whole number of judgments against solvent persons, would hardly compensate the expense of the institution. It also appears, that the number of causes left to be tried, could easily be decided by the six former judges.

Upon looking over the number of suits in the eastern circuit, it appears to me strange, that the members representing that part of the country, should insist upon increasing the expense of the system, when the courts have there scarcely any business to attend to; and that gentlemen in the southern states, where the business is greater, should be willing to lessen the expense.

I never heard the smallest complaint in the state I represent, respecting the incompetency of the former courts to discharge the business in that state. I believe they have always gone through the docket, whenever they attended, and as far as my own observations go, that is the fact. It appears strange to me, that the new courts and new expenses should be called for in other parts of the United States, when the old courts are competent to the business in that state, where the business has been considerably more than in any other state, although it is now very much declined, and probably will decline still more. In the courts of Maine, West Pennsylvania, West Virginia and West Tennessee, no suit at all had been instituted in June last.

Under the view of the subject thus presented, I consider the late courts as useless and unnecessary, and the expense, therefore, is to me highly objectionable. I do not consider it in the nature of a compensation, for there is no equivalent rendition of service. I cannot help considering it as a tribute for past services—as a tribute for the zeal displayed by these gentlemen in supporting principles which the people have denounced. I think the federal maxim always was ‘millions for defence, not a cent for tribute.’ I cannot consent to tax the people even one cent, as a tribute to men who disrespect their principles.

Another objection I have to the new organization of the courts, is, their tendency to produce a gradual demolition of state courts, by multiplying the number of courts, increasing their jurisdiction, making bonds or obligatory bills assignable, with the privilege of bringing suits in the name of the assignee, &c. &c. or, as gentlemen say, bringing federal justice to every man’s door; the state courts will be ousted of their jurisdiction, which, I think by no means a desirable event. Under this consideration alone, and under the conviction I feel of the inutility of the courts, I shall vote for the repeal.

Upon the whole view of the subject, feeling the firmest conviction, that there is no constitutional impediment in the way of repealing the act in question, upon the most fair and candid interpretation of the constitution; believing, that principles advanced in opposition, go directly to the destruction of the fundamental principle of the constitution, the responsibility of all public agents to the people; that they go to the establishment of a permanent corporation of individuals invested with ultimate, censorial and controlling power over all the departments of the government, over legislation, execution and decision, and irresponsible to the people; believing that these principles are in direct hostility with the great principle of representative government; believing that the courts, formerly established, were fully competent to the business they had to perform, and that the present courts are useless, unnecessary and expensive; believing, that the supreme court has heretofore discharged all the duties assigned to it, in less than one month in the year, and that its duties could be performed in half that time; considering the compensations of the judges to be amongst the highest, given to any of the highest officers of the United States, for the services of the whole year; considering the compensations of all the judges greatly exceeding the services assigned them, as well as considering all the circumstances attending the substitution of the new system for the old one, by increasing the number of judges, and compensations, and lessening their duties by the distribution of the business into a greater number of hands, &c.—whilst acting under these impressions, I shall vote against the motion now made for striking out the first section of the repealing bill.

SPEECH OF JAMES A. BAYARD.

ON

THE JUDICIARY BILL,

**DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, FEBRUARY 19, 1802.***



In committee of the whole, Mr. Bayard spoke as follows :

MR. CHAIRMAN,

I MUST be allowed to express my surprize at the course pursued by the honorable gentleman from Virginia, (Mr. Giles,) in the remarks which he has made on the subject before us. I had expected that he would have adopted a different line of conduct. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House, as from the professions of a desire to conciliate, which he has so repeatedly made during the session. We have been invited to bury the hatchet, and brighten the chain of peace. We were disposed to meet on middle ground. We had assurances from the gentleman that he would abstain from reflections on the past, and that his only wish was that we might unite in future in promoting the welfare of our common country. We confided in the gentleman's sincerity, and cherished the hope, that if the divisions of party were

* See page 126.

not banished from the House, its spirit would be rendered less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the House, and inflame the passions of the nation. I am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has, therefore, determined to make the measure a party question. He has probably secured success, but would it not have been more honorable and more commendable, to have left the decision of a great constitutional question to the understanding, and not to the prejudices of the House. It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far, from the points of the debate, and has extended his animadversions to all the prominent measures of the former administrations. In following him through his preliminary observations, I necessarily lose sight of the bill upon your table.

The gentleman commenced his strictures with the philosophic observation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That some were attached to the monarchical, while others thought the republican more eligible. This, as an abstract remark, is certainly true, and could have furnished no ground of offence, if it had not evidently appeared that an allusion was designed to be made to the parties in this country. Does the gentleman suppose that we have a less lively recollection than himself, of the oath which we have taken to support the constitution; that we are less sensible of the spirit of our government.

or less devoted to the wishes of our constituents? Whatever impression it might be the intention of the gentleman to make, he does not believe that there exists in the country an anti-republican party. He will not venture to assert such an opinion on the floor of this House. That there may be a few individuals having a preference for monarchy is not improbable; but will the gentleman from Virginia, or any other gentleman, affirm in his place, that there is a party in the country who wish to establish monarchy? Insinuations of this sort belong not to the legislature of the union. Their place is an election-ground or an ale-house. Within these walls they are lost; abroad, they have had an effect, and I fear are still capable of abusing popular credulity.

We were next told of the parties which have existed, divided by the opposite views of promoting executive power and guarding the rights of the people. The gentleman did not tell us in plain language, but he wished it to be understood, that he and his friends were the guardians of the people's rights, and that we were the advocates of executive power.

I know that this is the distinction of party which some gentlemen have been anxious to establish; but it is not the ground on which we divide. I am satisfied with the constitutional powers of the executive, and never wished nor attempted to increase them; and I do not believe, that gentlemen on the other side of the House ever had a serious apprehension of danger from an increase of executive authority. No, sir, our views, as to the powers which do and ought to belong to the general and state governments, are the true sources of our divisions. I co-operate with the party to which I am attached, because I believe their true object and end is an honest and efficient support of the general government, in the exercise of the legitimate powers of the constitution.

I pray to God I may be mistaken in the opinion I entertain as to the designs of gentlemen to whom I am

opposed. Those designs I believe hostile to the powers of this government. State pride extinguishes a national sentiment. Whatever is taken from this government is given to the states.

The ruins of this government aggrandize the states. There are states which are too proud to be controled; whose sense of greatness and resource renders them indifferent to our protection, and induces a belief, that if no general government existed, their influence would be more extensive, and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression, to which the government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember, that human affairs are not to be arrested in their course, at artificial points. The impulse now given may be accelerated by causes at present out of view. And when those, who now design well, wish to stop, they may find their powers unable to resist the torrent. It is not true, that we ever wished to give a dangerous strength to executive power. While the government was in our hands, it was our duty to maintain its constitutional balance, by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The struggle was to maintain the constitutional powers of the executive. The wild principles of French liberty were scattered through the country. We had our jacobins and disorganizers. They saw no difference between a king and a President. and as the people of France had put down their king, they thought the people of America ought to put down their President. They, who considered the constitution as securing all the principles of rational and practicable liberty, who were unwilling to embark upon the tempestuous sea of revolution in pursuit of visionary schemes, were denounced as monarchists. A line was drawn between the government and the people, and the friends of the government were marked as the enemies of the people. I hope, however, that the gov-

ernment and the people are now the same; and I pray to God, that what has been frequently remarked, may not, in this case, be discovered to be true, that they, who have the name of the people the most often in their mouths, have their true interests the most seldom at their hearts.

The honorable gentleman from Virginia wandered to the very confines of the federal administration, in search of materials the most inflammable and most capable of kindling the passions of his party.

He represents the government as seizing the first moment which presented itself, to create a dependent monied interest, ever devoted to its views. What are we to understand by this remark of the gentleman? Does he mean to say, that Congress did wrong in funding the public debt? Does he mean to say, that the price of our liberty and independence ought not to have been paid? Is he bold enough to denounce this measure as one of the federal victims marked for destruction? Is it the design to tell us, that its day has not yet come, but is approaching; and that the funding system is to add to the pile of federal ruins? Do I hear the gentleman say, we will reduce the army to a shadow, we will give the navy to the worms, the mint, which presented the people with the emblems of their liberty and of their sovereignty, we will abolish—the revenue shall depend upon the wind and waves, the judges shall be made our creatures, and the great work shall be crowned and consecrated by relieving the country from an odious and oppressive public debt? These steps, I presume, are to be taken in progression.

The gentleman will pause at each, and feel the public pulse. As the fever increases, he will proceed, and the moment of delirium will be seized to finish the great work of destruction.

The assumption of the state debts has been made an article of distinct crimination. It has been ascribed to the worst motives: to a design of increasing a

dependent monied interest. Is it not well known, that those debts were part of the price of our revolution—that they rose in the exigency of our affairs, from the efforts of the particular states, at times when the federal arm could not be extended to their relief? Each state was entitled to the protection of the union, the defence was a common burden, and every state had a right to expect, that the expenses attending its individual exertions in the general cause, would be reimbursed from the public purse. I shall be permitted further to add, that the United States, having absorbed the sources of state revenue, except direct taxation, which was required for the support of the state governments, the assumption of these debts was necessary to save some of the states from bankruptcy.

The internal taxes are made one of the crimes of the federal administration. They were imposed, says the gentleman, to create a host of dependants on executive favor. This supposes the past administrations to have been not only very wicked, but very weak. They lay taxes in order to strengthen their influence. Who is so ignorant as not to know, that the imposition of a tax would create an hundred enemies for one friend? The name of excise was odious; the details of collection were unavoidably expensive, and it was to operate upon a part of the community least disposed to support public burdens, and most ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this government. He will find it not that dangerous weapon in the hands of the administration, which he has heretofore supposed it; he will probably discover that the poison is accompanied by its antidote, and that an appointment of the government, while it gives to the administration one lazy friend, will raise up against it ten active enemies. No! The motive ascribed for the imposition of the internal taxes, is unfounded as it is uncharitable. The federal administration, in creating burdens to support the credit of the nation, and to

supply the means of its protection, knew that they risked the favor of those upon whom their power depended. They were willing to be the victims, when the public good required.

The duties on imports and tonnage furnished a precarious revenue; a revenue at all times exposed to deficiency, from causes beyond our reach. The internal taxes offered a fund less liable to be impaired by accident; a fund which did not rob the mouth of labor, but was derived from the gratification of luxury. These taxes are an equitable distribution of the public burdens. Through this medium the western country is enabled to contribute something to the expenses of a government which has expended and daily expends such large sums for its defence. When these taxes were laid, they were indispensable. With the aid of them it has been difficult to prevent an increase of the public debt. And notwithstanding the fairy prospects which now dazzle our eyes, I undertake to say, if you abolish them this session, you will be obliged to restore them, or supply their place by a direct tax, before the end of two years. Will the gentleman say, that the direct tax was laid in order to enlarge the bounds of patronage? Will he deny, that this was a measure to which we had been urged for years by our adversaries, because they foresaw in it the ruin of federal power? My word for it, no administration will ever be strengthened by a patronage united with taxes which the people are sensible of paying.

We were next told, that to get an army an Indian war was necessary. The remark was extremely bald, as the honorable gentleman did not allege a single reason for the position. He did not undertake to state, that it was a wanton war, or provoked by the government. He did not even venture to deny, that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody scalping-knife and murderous tomahawk of the savage. What ought the government to have done? Ought they to

have estimated the value of the blood, which probably would be shed, and the amount of the devastation likely to be committed, before they determined on resistance? They raised an army, and after great expense and various fortune, they have secured the peace and safety of the frontiers. But why was the army mentioned on this occasion, unless to forewarn us of the fate which awaits them, and to tell us, that their days are numbered? I cannot suppose that the gentleman mentioned this little army, distributed on a line of three thousand miles, for the purpose of giving alarm to three hundred thousand free and brave yeomanry, ever ready to defend the liberties of the country.

The honorable gentleman proceeded to inform the committee, that the government, availing itself of the depredations of the Algerines, created a navy. Did the gentleman mean to insinuate, that this war was invited by the United States? Has he any documents or proof to render the suspicion colorable? No, sir, he has none. He well knows, that the Algerine aggressions were extremely embarrassing to the government. When they commenced, we had no marine force to oppose to them. We had no harbors or places of shelter in the Mediterranean. A war with these pirates could be attended with neither honor nor profit. It might cost a great deal of blood, and in the end it might be feared, that a contest so far from home, subject to numberless hazards and difficulties, could not be maintained. What would gentlemen have had the government to do? I know there are those who are ready to answer—abandon the Mediterranean trade. But would this have done? The corsairs threatened to pass the Straits, and were expected in the Atlantic. Nay, sir, it was thought that our very coasts would not have been secure.

Will gentlemen go farther and say, that the United States ought to relinquish their commerce? I believe this opinion has high authority to support it. It has been said, that we ought to be only cultivators

of the earth, and make the nations of Europe our carriers.

This is not an occasion to examine the solidity of this opinion; but I will only ask, admitting the administration were disposed to turn the pursuits of the people of this country from the ocean to the land, whether there is a power in the government, or whether there would be, if we were as strong as the government of Turkey, or even of France, to accomplish the object? With a sea-coast of seventeen hundred miles, with innumerable harbors and inlets, with a people enterprising beyond example, is it possible to say, you will have no ships, or sailors, or merchants? The people of this country will never consent to give up their navigation, and every administration will find themselves constrained to provide means to protect their commerce.

In respect to the Algerines, the late administrations were singularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purse in one hand and a sword in the other. This was the policy of the government. Every commercial nation in Europe was tributary to these petty barbarians. It was not esteemed disgraceful. It was an affair of calculation, and the administration made the best bargain in their power. They have heretofore been scandalized for paying tribute to a pirate, and now they are criminated for preparing a few frigates to protect our citizens from slavery and chains. Sir, I believe on this and many other occasions, if the finger of heaven had pointed out a course, and the government had pursued it, yet that they would not have escaped the censure and reproaches of their enemies.

We were told, that the disturbances in Europe were made a pretext for augmenting the army and navy. I will not, Mr. Chairman, at present go into a detailed view of the events which compelled the government to put on the armor of defence, and to resist by force the

French aggressions. All the world know the efforts which were made to accomplish an amicable adjustment of differences with that power. It is enough to state, that ambassadors of peace were twice repelled from the shores of France with ignominy and contempt. It is enough to say, that it was not till after we had drunk the cup of humiliation to the dregs, that the national spirit was roused to a manly resolution to depend only on their God and their own courage for protection. What, sir, did it grieve the gentleman, that we did not crouch under the rod of the Mighty Nation, and like the petty powers of Europe, tamely surrender our independence? Would he have had the people of the United States relinquish without a struggle those liberties which had cost so much blood and treasure? We had not, sir, recourse to arms, till the mouths of our rivers were choaked with French corsairs; till our shores, and every harbor, were insulted and violated; till our commercial capital had been seized, and no safety existed for the remainder but the protection of force. At this moment, a noble enthusiasm electrized the country; the national pulse beat high, and we were prepared to submit to every sacrifice, determined only, that our independence should be the last. At that time, an American was a proud name in Europe; but I fear, much I fear, that in the course we are now likely to pursue, the time will soon arrive, when our citizens abroad will be ashamed to acknowledge their country.

The measures of '98 grew out of the public feelings. They were loudly demanded by the public voice. It was the people who drove the government to arms, and not as the gentleman expressed it, the government which pushed the people to the X. Y. Z. of their political designs before they understood the A. B. C. of their political principles.

But what, sir, did the gentleman mean by his X. Y. Z.? I must look for something very significant, something more than a quaintness of expression, or a play

upon words, in what falls from a gentleman of his learning and ability. Did he mean that the despatches which contained those letters were impostures, designed to deceive and mislead the people of America?—Intended to rouse a false spirit not justified by events? Though the gentleman had no respect for some of the characters of that embassy; though he felt no respect for the chief justice, or the gentleman appointed from South Carolina, two characters as pure, as honorable and exalted, as any the country can boast of, yet, I should have expected that he would have felt some tenderness for Mr. Gerry, in whom his party had since given proofs of undiminished confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and assisted in fabricating a tale which was to blind his countrymen and to enable the government to destroy their liberties? Sir, I will not avail myself of the equivocations or confessions of Talleyrand himself; I say these gentlemen will not dare publicly to deny what is attested by the hand and seal of Mr. Gerry.

The truth of these despatches admitted, what was your government to do? Give us, say the Directory, one million, two hundred thousand livres for our own purse, and purchase fifteen millions of dollars of Dutch debt, (which was worth nothing,) and we will receive your ministers and negotiate for peace.

It was only left to the government to choose between an unconditional surrender of the honor and independence of the country, or a manly resistance. Can you blame, sir, the administration for a line of conduct, which has reflected on the nation so much honor, and to which, under God, it owes its present prosperity.

These are the events of the general government, which the gentleman has reviewed in succession, and endeavored to render odious or suspicious. For all this I could have forgiven him, but there is one thing for which I will not, I cannot forgive him. I mean his attempt to disturb the ashes of the dead: to disturb

the ashes of the great and good Washington. Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only say that as long as exalted talents and virtues confer honor among men, the name of Washington will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late executive, he opened another, equally poisoned, against the judiciary. He has told us, sir, that when the power of the government was rapidly passing from federal hands, after we had heard the thundering voice of the people which dismissed us from their service, we erected a judiciary, which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better, sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. No, sir, I never had a thought that any thing belonging to the federal government was holy in the eyes of those gentlemen. I could never, therefore, imagine that a sanctuary could be built up which would not be violated. I believe these gentlemen regard public opinion because their power depends upon it, but I believe they respect no existing establishment of the government, and if public opinion could be brought to support them, I have no doubt they would annihilate the whole. I shall at present only say further on this head, that we thought the reorganization of the judicial system an useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of the country.

The honorable gentleman expressed his joy that the constitution had at last become sacred in our eyes; that we formerly held that it meant every thing or nothing. I believe, sir, that the constitution formerly appeared different in our eyes from what it now appears in the eyes of the dominant party. We formerly saw in it the principles of a fair and goodly creation.

We looked upon it as a source of peace, of safety, of honor and of prosperity to the country. But now the view is changed; it is the instrument of wild and dark destruction. It is a weapon which is to prostrate every establishment, to which the nation owes the unexampled blessings which it enjoys.

The present state of the country is an unanswerable commentary upon our construction of the constitution. It is true that we made it mean much, and I hope, sir, we shall not be taught by the present administration that it can mean even worse than nothing.

The gentleman has not confined his animadversions to the individual establishment, but has gone so far as to make the judges the subject of personal invective. They have been charged with having transgressed the bounds of judicial duty, and become the apostles of a political sect. We have heard of their travelling about the country for little other purpose than to preach the federal doctrines to the people.

Sir, I think a judge should never be a partizan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have still to learn that such a charge can be sustained against the judges of the United States.

The constitution is the supreme law of the land, and they have taken pains, in their charges to grand juries, to unfold and explain its principles. Upon similar occasions, they have enumerated the laws which compose our criminal code, and when some of those laws have been denounced by the enemies of the administration as unconstitutional, the judges may have felt themselves called upon to express their judgments upon that point and the reasons of their opinions.

So far, but no further, I believe the judges have gone; in going thus far they have done nothing more than faithfully discharge their duty.

But if, sir, they have offended against the constitu-



tion or laws of the country, why are they not impeached? The gentleman now holds the sword of justice; the judges are not a privileged order, they have no shelter but their innocence.

But in any view are the sins of the former judges to be fastened upon the new judicial system? Would you annihilate a system, because some men under part of it had acted wrong. The constitution has pointed out a mode of punishing and removing the men, and does not leave this miserable pretext for the wanton exercise of powers which is now contemplated.

The honorable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented going about searching out victims of the sedition law. But no fact has been stated; no proof has been adduced, and the gentleman must excuse me for refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of misery are grateful to his feelings, let me turn his view from the walks of the judges to the track of the present executive. It is in this path we see the real victims of stern, uncharitable, unrelenting power. It is here, sir, we see the soldier who fought the battles of the revolution; who spilt his blood and wasted his strength to establish the independence of his country, deprived of the reward of his services, and left to pine in penury and wretchedness. It is along this path that you may see helpless children crying for bread, and gray hairs sinking in sorrow to the grave! It is here that no innocence, no merit, no truth, no services, can save the unhappy sectary who does not believe in the creed of those in power. I have been forced upon this subject, and before I leave it, allow me to remark, that without inquiring into the right of the President to make vacancies in office, during the recess of the senate, but admitting the power to exist.

yet that it never was given by the constitution to enable the chief magistrate to punish the insults, to revenge the wrongs, or to indulge the antipathies of the man. If the discretion exists, I have no hesitation in saying that it is abused when exercised from any other motives than the public good. And when I see the will of a President precipitating from office, men of probity, knowledge and talents, against whom the community has no complaint, I consider it as a wanton and dangerous abuse of power. And when I see men who have been the victims of this abuse of power, I view them as the proper objects of national sympathy and commiseration.

Among the causes of impeachment against the judges, is their attempt to force the sovereignties of the states to bow before them. We have heard them called an ambitious body politic; and the fact I allude to has been considered as full proof of the inordinate ambition of the body.

Allow me to say, sir, the gentleman knows too much, not to know that the judges are not a body politic. He supposed, perhaps, there was an odium attached to the appellation, which it might serve his purposes to connect with the judges. But, sir, how do you derive any evidence of the ambition of the judges, from their decision, that the states under our federal compact were compellable to do justice? Can it be shown, or even said, that the judgment of the court was a false construction of the constitution? The policy of later times, on this point, has altered the constitution, and in my opinion, has obliterated its fairest feature. I am taught by my principles, that no power ought to be superior to justice. It is not, that I wish to see the states humbled in dust and ashes; it is not, that I wish to see the pride of any man flattered by their degradation; but it is, that I wish to see the great and the small, the sovereign and the subject, bow at the altar of justice, and submit to those obligations from which the Deity himself is not exempt. What was

the effect of this provision in the constitution? It prevented the states being the judges in their own cause, and deprived them of the power of denying justice. Is there a principle of ethics more clear, than that a man ought not to be a judge in his own cause, and is not the principle equally strong, when applied not to one man, but to a collective body? It was the happiness of our situation which enabled us to force the greatest state to submit to the yoke of justice, and it would have been the glory of the country in the remotest times, if the principle in the constitution had been maintained. What had the states to dread? Could they fear injustice, when opposed to a feeble individual? Has a great man reason to fear from a poor one? And could a potent state be alarmed by the unfounded claim of a single person? For my part, I have always thought, that an independent tribunal ought to be provided, to judge on the claims against this government. The power ought not to be in our own hands. We are not impartial, and are therefore liable, without our knowledge, to do wrong. I never could see why the whole community should not be bound by as strong an obligation to do justice to an individual, as one man is bound to do it to another.

In England, the subject has a better chance for justice against the sovereign, than in this country a citizen has against a state. The crown is never its own arbiter, and they who sit in judgment, have no interest in the event of their decision.

The judges, sir, have been criminated for their conduct in relation to the sedition act, and have been charged with searching for victims who were sacrificed under it. The charge is easily made, but has the gentleman the means of supporting it? It was the evident design of the gentleman to attach the odium of the sedition law to the judiciary; on this score the judges are surely innocent. They did not pass the act; the legislature made the law, and they were obliged, by their oaths, to execute it. The judges de-

cided the law to be constitutional, and I am not now going to agitate the question. I did hope, when the law passed, that its effect would be useful. It did not touch the freedom of speech, and was designed only to restrain the enormous abuses of the press. It went no further than to punish malicious falsehoods, published with the wicked intention of destroying the government. No innocent man ever did, or could have suffered under the law. No punishment could be inflicted, till a jury was satisfied, that a publication was false, and that the party charged, knowing it to be false, had published it with an evil design.

The misconduct of the judges, however, on this subject, has been considered by the gentleman the more aggravated, by an attempt to extend the principles of the sedition act, by an adoption of those of the common law. Connected with this subject, such an attempt was never made by the judges. They have held, generally, that the constitution of the United States was predicated upon an existing common law. Of the soundness of that opinion, I never had a doubt. I should scarcely go too far, were I to say, that, stripped of the common law, there would be neither constitution nor government. The constitution is unintelligible without reference to the common law. And were we to go into our courts of justice, with the mere statutes of the United States, not a step could be taken, not even a contempt could be punished. Those statutes prescribe no forms of pleadings; they contain no principles of evidence; they furnish no rule of property. If the common law does not exist in most cases, there is no law but the will of the judge.

I have never contended, that the whole of the common law attached to the constitution, but only such parts as were consonant to the nature and spirit of our government. We have nothing to do with the law of the ecclesiastical establishment, nor with any principle of monarchical tendency. What belongs to us, and what is unsuitable, is a question for the sound discretion of

the judges. The principle is analogous to one which is found in the writings of all jurists and commentators. When a colony is planted, it is established subject to such parts of the law of the mother country as are applicable to its situation. When our forefathers colonized the wilderness of America, they brought with them the common law of England. They claimed it as their birthright, and they left it as the most valuable inheritance to their children. Let me say, that this same common law, now so much despised and vilified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our distinction from the colonists of France, of Portugal, and of Spain. How long is it since we have discovered the malignant qualities which are now ascribed to this law? Is there a state in the union which has not adopted it, and in which it is not in force? Why is it refused to the federal constitution? Upon the same principle, that every power is denied which tends to invigorate the government. Without this law the constitution becomes, what perhaps many gentlemen wish to see it, a dead letter.

For ten years it has been the doctrine of our courts, that the common law was in force, and yet can gentlemen say, that there has been a victim who has suffered under it? Many have experienced its protection, none can complain of its oppression.

In order to demonstrate the aspiring ambition of this body politic, the judiciary, the honorable gentleman stated, with much emphasis and feeling, that the judges had been hardy enough to send their mandate into the executive cabinet. Was the gentleman, sir, acquainted with the fact, when he made this statement? It differs essentially from what I know I have heard upon the subject. I shall be allowed to state the fact.

Several commissions had been made out by the late administration, for justices of the peace of this territory. The commissions were complete; they were

signed and sealed, and left with the clerks of the office of state, to be handed to the persons appointed. The new administration found them on the clerk's table, and thought proper to withhold them. These officers are not dependent on the will of the President. The persons, named in the commissions, considered that their appointments were complete, and that the detention of their commissions was a wrong, and not justified by the legitimate authority of the executive. They applied to the supreme court for a rule upon the secretary of state, to show cause why a *mandamus* should not issue, commanding him to deliver up the commissions. Let me ask, sir, what could the judges do? The rule to show cause was a matter of course upon a new point, at the least doubtful. To have denied it, would have been to shut the doors of justice against the parties. It concludes nothing, neither the jurisdiction nor the regularity of the act. The judges did their duty; they gave an honorable proof of their independence. They listened to the complaint of an individual against your President, and have shown themselves disposed to grant redress against the greatest man in the government. If a wrong has been committed, and the constitution authorizes their interference, will gentlemen say, that the secretary of state, or even the President, is not subject to law? And if they violate the law, where can we apply for redress but to our courts of justice? But, sir, it is not true, that the judges issued their mandate to the executive; they have only called upon the secretary of state to show them, that what he has done is right. It is but an incipient proceeding, which decides nothing.


[Mr. Giles rose to explain.—He said, that the gentleman from Delaware had ascribed to him many things which he did not say, and had afterwards undertaken to refute them. He had only said, that mandatory process had issued; that the course, pursued by the court, indicated a belief by them, that they had jurisdiction, and that in the event of no cause being

shown, a *mandamus* would issue. Mr. Bayard then continued:]

I stated the gentleman's words as I took them down. It is immaterial whether the mistake was in the gentleman's expression, or in my understanding. He has a right to explain, and I will take his position as he now states it. I deny, sir, that mandatory process has issued. Such process would be imperative, and suppose a jurisdiction to exist; the proceeding, which has taken place, is no more than notice of the application for justice made to the court, and allows the party to show, either that no wrong has been committed, or that the court has no jurisdiction over the subject. Even, sir, if the rule were made absolute, and the *mandamus* issued, it would not be definitive; but it would be competent for the secretary, in a return to the writ, to justify the act which has been done, or to show, that it is not a subject of judicial cognizance.

It is not till after an insufficient return, that a peremptory *mandamus* issues. In this transaction, so far from seeing any thing culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that constitutional provision which makes them independent. They are not terrified by the frowns of executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make, before he proceeded to the consideration of those points which properly belong to the subject before the committee. I have not supposed the topics I have been discussing had any connexion with the bill on your table; but I felt it as a duty, not to leave unanswered charges against the former administrations and our judges, of the most insidious tendency, which I know to be unfounded, and which were calculated and designed to influence the decision on the measure now proposed. Why, Mr.



Chairman, has the present subject been combined with the army, the navy, the internal taxes and the sedition law? Was it to involve them in one common odium, and to consign them to one common fate? Do I see, in the preliminary remarks of the honorable member, the title-page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? They are now called on to reduce the army, to diminish the navy, to abolish the mint, to destroy the independence of the judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of monied interest and aristocratic influence? Be assured, sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their career will not be arrested while a trace remains of what was done by the former administration.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the gospel have been represented, like the judges, forgetting the duties of their calling, and employed in disseminating the heresies of federalism. Am I then, sir, to understand, that religion is also denounced, and that your churches are to be shut up? Are we to be deprived, sir, both of law and gospel? Where do the principles of the gentleman end? When the system of reform is completed, what will remain? I pray God that this flourishing country, which, under his providence, has attained such a height of prosperity, may yet escape the desolation, suffered by another nation by the practice of similar doctrines.

I beg pardon of the committee for having consumed so much time upon points little connected with the subject of the debate. Till I heard the honorable member from Virginia, yesterday, I was prepared only to discuss the merits of the bill upon which you are called

to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavor to counteract, and I therefore yielded to the necessity of pursuing the course he had taken, though I was conscious of departing very far from the subject before the committee. To the discussion of that subject, I now return with great satisfaction, and shall consider it under the two views it naturally presents: the constitutionality and the expediency of the measure. I find it most convenient to consider, first, the question of expediency, and shall, therefore, beg permission to invert the natural order of the inquiry.

To show the inexpediency of the present bill, I shall endeavor to prove the expediency of the judicial law of the last session. In doing this, it will be necessary to take a view of the leading features of the pre-existing system, to inquire into its defects, and to examine how far the evils complained of were remedied by the provisions of the late act. It is not my intention to enter into the details of the former system; it can be necessary only to state so much as will distinctly show its defects.

There existed, sir, a supreme court having original cognizance in a few cases, but principally a court of appellate jurisdiction. This was the great national court of dernier resort. Before this tribunal, questions of unlimited magnitude and consequence, both of a civil and political nature, received their final decision: and I may be allowed to call it the national crucible of justice, in which the judgments of inferior courts were to be reduced to their elements and cleansed from every impurity. There was a circuit court, composed in each district of a judge of the supreme court and the district judge. This was the chief court of business both of a civil and criminal nature.

In each district, a court was established for affairs of revenue, and of admiralty and maritime jurisdiction. It is not necessary, for the purposes of the present argument, to give a more extensive outline of the for-

mer plan of our judiciary. We discover that the judges of the supreme court, in consequence of their composing a part of the circuit courts, were obliged to travel from one extremity to the other of this extensive country. In order to be in the court-house two months in the year, they were forced to be upon the road six. The supreme court being the court of last resort, having final jurisdiction over questions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience and experience. The union of these qualities is rarely, very rarely, found in men who have not passed the meridian of life. My lord Coke tells us, no man is fit to be a judge till he has numbered the lucubrations of twenty years. Men of studious habits are seldom men of strong bodies. In the course of things, it could not be expected, that men, fit to be judges of your supreme courts, would be men capable of traversing the mountains and wildernesses of this extensive country. It was an essential and great defect in this court, that it required in men the combination of qualities, which it is a phenomenon to find united. It required, that they should possess the learning and experience of years, and the strength and activity of youth. I may say further, Mr. Chairman, that this court, from its constitution, tended to deterioration and not to improvement. Your judges, instead of being in their closets and increasing, by reflection and study, their stock of wisdom and knowledge, had not even the means of repairing the ordinary waste of time. Instead of becoming more learned and more capable, they would gradually lose the fruits of their former industry. Let me ask, if this was not a vicious construction of a court of the highest authority and greatest importance in the nation—in a court from which no one had an appeal and to whom it belonged to establish the leading principles of national jurisprudence?

In the constitution of this court, as a court of last resort, there was another essential defect. The ap-

peals to this court are from the circuit courts. The circuit court consists of the district judge and a judge of the supreme court. In cases where the district judge is interested, where he has been counsel, and where he has decided in the court below, the judge of the supreme court alone composes the circuit court. What then is substantially the nature of this appellate jurisdiction? In truth and practice, the appeal is from a member of a court to the body of the same court. The circuit courts are but emanations of the supreme court. Cast your eyes on the supreme court; you see it disappear, and its members afterwards arising in the shape of circuit judges. Behold the circuit judges; they vanish, and immediately you perceive the form of the supreme court appearing. There is, sir, a magic in this arrangement, which is not friendly to justice. When the supreme court assembles, appeals come from the various circuits of the United States. There are appeals from the decisions of each judge. The judgments of each member pass in succession under the revision of the whole body. Will not a judge, while he is examining the sentence of a brother to-day, remember that that brother will sit in judgment upon his proceedings to-morrow? Are the members of a court, thus constituted, free from all motive, exempt from all bias, which could even remotely influence opinion on the point of strict right; and yet let me ask emphatically, whether this court, being the court of final resort, should not be so constituted, that the world should believe and every suitor be satisfied, that in weighing the justice of a cause, nothing entered the scales but its true merits.

Your supreme court, sir, I have never considered as any thing more than the judges of assize sitting in bank. It is a system with which, perhaps, I should find no fault, if the judges sitting in bank did not exercise a final jurisdiction. Political institutions should be so calculated as not to depend upon the virtues, but to guard against the vices and weaknesses of men.

It is possible, that a judge of the supreme court would not be influenced by the *esprit du corps*, that he would neither be gratified by the affirmance, nor mortified by the reversal of his opinions; but this, sir, is estimating the strength and purity of human nature upon a possible, but not on its ordinary scale.

I believe, Mr. Chairman, that, in practice, the formation of the supreme court frustrated, in a great degree, the design of its institution. I believe that many suitors were discouraged from seeking a revision of the opinions of the circuit court, by a deep impression of the difficulties to be surmounted in obtaining the reversal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals well constituted, is not confined to the mere act of reviewing the sentence of an inferior court; but is more extensively useful by the general operation of the knowledge of its existence upon inferior courts. The power of uncontrollable decision is of the most delicate and dangerous nature. When exercised in the courts, it is more formidable than by any other branch of our government. It is the judiciary only, which can reach the person, the property or life of an individual. The exercise of their power is scattered over separate cases, and creates no common cause. The great safety under this power arises from the right of appeal. A sense of this right combines the reputation of the judge with the justice of the cause. In my opinion, it is a strong proof of the wisdom of a judicial system, when few causes are carried into the court of the last resort. I would say, if it were not paradoxical, that the very existence of a court of appeals ought to destroy the occasion for it. The conscience of the judge, sir, will no doubt be a great check upon him in the unbounded field of discretion created by the uncertainty of law; but I should, in general cases, more rely upon the effect produced by his knowledge, that an inadvertent or designed abuse of power was liable to be corrected by a superior tribu-

nal. A court of appellate jurisdiction, organized upon sound principles, should exist, though few causes arose for their decision; for it is surely better to have a court and no causes, than to have causes and no court. I now proceed, sir, to consider the defects which are plainly discernable, or which have been discovered by practice in the constitution of the circuit courts.

These courts, from information which I have received, I apprehend were originally constructed upon a fallacious principle. I have heard it stated, that the design of placing the judges of the supreme court in the circuit courts, was to establish uniform rules of decision throughout the United States. It was supposed that the presiding judges of the circuit courts, proceeding from the same body, would tend to identify the principles and rules of decision in the several districts. In practice a contrary effect has been discovered to be produced by the peculiar organization of these courts. In practice we have found not only a want of uniformity of rule between the different districts, but no uniformity of rule in the same district. No doubt there was an uniformity in the decisions of the same judge; but as the same judge seldom sat twice successively in the same district, and sometimes not till after an interval of two or three years, his opinions were forgotten or reversed before he returned. The judges were not educated in the same school. The practice of the courts, the forms of proceeding, as well as the rules of property, are extremely various in the different quarters of the United States. The lawyers of the eastern, the middle and southern states, are scarcely professors of the same science. These courts were in a state of perpetual fluctuation. The successive terms gave you courts in the same district, as different from each other as those of Connecticut and Virginia. No system of practice could grow up, no certainty of rule could be established. The seeds sown in one term scarcely vegetated before they were trodden under foot. The condition of a suitor was

terrible; the ground was always trembling under his feet. The opinion of a former judge was no precedent to his successor. Each considered himself bound to follow the light of his own understanding. To exemplify these remarks, I will take the liberty of stating a case which came under my own observation. An application before one judge was made to quash an attachment in favor of a subsequent execution creditor; the application was resisted upon two grounds, and the learned judge, to whom the application was first made, expressing his opinion in support of both grounds, dismissed the motion. At the succeeding court, a different judge presided, and the application was renewed and answered upon the same grounds. The second learned judge was of opinion, that one point had no validity, but he considered the other sustainable, and was about also to dismiss the motion, but, upon being pressed, at last consented to grant a rule to show cause. At the third term, a third learned judge was on the bench, and though the case was urged upon its former principles, he was of opinion, that both answers to the application were clearly insufficient, and accordingly quashed the attachment. When the opinions of his predecessors were cited, he replied, that every man was to be saved by his own faith.

Upon the opinion of one judge, a suitor would set out in a long course of proceedings, and after losing much time and wasting much money, he would be met by another judge, who would tell him he had mistaken his road, that he must return to the place from which he started, and pursue a different track. Thus it happened as to the chancery process, to compel the appearance of a defendant. Some of the judges considered themselves bound by the rules in the English books, while others conceived that a power belonged to the court, upon the service of a subpcena, to make a short rule for the defendant to appear and answer, or that the bill should be taken *pro confesso*. A case

of this kind occurred where much embarrassment was experienced. In the circuit court for the district of Pennsylvania, a bill in chancery was filed against a person, who then happened to be in that district, but whose place of residence was in the north-western territory. The subpœna was served, but there was no answer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and answer at the expiration of a limited time, or that the bill be taken *pro confesso*. A personal service of this rule being necessary, the complainant was obliged to hire a messenger to travel more than a thousand miles to serve a copy of the rule. At the ensuing court, affidavit was made of the service, and a motion to make the rule absolute. The scene immediately changed, a new judge presided, and it was no longer the same court.

The authority was called for, to grant such a rule; was it warranted by any act of Congress, or by the practice of the state? It was answered, there is no act of Congress, the state has no court of chancery. But this proceeding was instituted and has been brought to its present stage, at considerable expense, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not consider, that the complainant could have a decree upon his bill, without going through the long train of process, found in the books of chancery practice. The complainant took this course, and at a future time, was told by another judge, that he was incurring an unnecessary loss of time and money, and that a common rule would answer his purpose. I ask you, Mr. Chairman, if any system could be devised more likely to produce vexation and delay? Surely, sir, the law is uncertain enough in itself, and its paths sufficiently intricate and tedious, not to require, that your suitors should be burdened with additional embarrassments, by the organization of your courts.

The circuit is the principal court of civil and criminal business; the defects of this court were, therefore, most generally and sensibly felt. The high characters of the judges at first brought suitors into the courts, but the business was gradually declining, though causes, belonging to the jurisdiction of the courts, were multiplying, the continual oscillation of the court baffled all conjecture as to the correct course of the proceeding, or the event of a cause. The law ceased to be a science. To advise your client, it was less important to be skilled in the books than to be acquainted with the character of the judge who was to preside. When the term approached, the inquiry was, what judge are we to have? What is his character as a lawyer? Is he acquainted with chancery law? Is he a strict, common lawyer, or a special pleader?

When the character of the judge was ascertained, gentlemen would then consider the nature of their causes, determine whether it was more advisable to use means to postpone or to bring them to a hearing.

The talents of the judges rather increased the evil, than afforded a corrective for the vicious constitution of these courts. They had not drawn their knowledge from the same sources: their systems were different, and hence the character of the court more essentially changed at each successive term. These difficulties and embarrassments banished suitors from the court, and without more than a common motive, recourse was seldom had to the federal tribunals.

I have ever considered it, also, as a defect in this court, that it was composed of judges of the highest and lowest grades. This, sir, was an unnatural association; the members of the court stood on ground too unequal to allow the firm assertion of his opinion to the district judge. Instead of being elevated, he felt himself degraded by a seat upon the bench of this court. In the district court he was every thing, in the circuit court he was nothing. Sometimes he was

obliged to leave his seat, while his associate reviewed the judgment which he had given in the court below. In all cases, he was sensible, that the sentences in the court in which he was, were subject to the revision and control of a superior jurisdiction, where he had no influence, but the authority of which was shared by the judge with whom he was acting. No doubt, in some instances, the district judge was an efficient member of this court, but this never arose from the nature of the system, but from the personal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient establishment of the circuit courts. They consisted only of two judges, and sometimes of one. The number was too small, considering the extent and importance of the jurisdiction of the court. Will you remember, sir, that they hold the power of life and death, without appeal? That these judgments were final over sums of two thousand dollars, and their original jurisdiction restrained by no limits of value, and that this was the court to which appeals were carried from the district court.

I have often heard, sir, that in a multitude of counsel, there was wisdom, and if the converse of the maxim be equally true, this court must have been very deficient. When we saw a single judge reversing the judgment of the district court, the objection was most striking, but the court never had the weight which it ought to have possessed and would have enjoyed, had it been composed of more members.

But two judges belonging to the court, an inconvenience was sometimes felt from a division of their opinions. And this inconvenience was but poorly obviated by the provision of the law, that in such cases, the cause should be continued to the succeeding term, and receive its decision from the opinion of the judge who should then preside.

I do not pretend, Mr. Chairman, to have enumerated all the defects, which belonged to the former judicial system. But I trust. those which I have pointed out.

in the minds of candid men, will justify the attempt of the legislature to revise that system, and to make a fairer experiment of that part of the plan of our constitution which regards the judicial power. The defects, sir, to which I have alluded, had been a long time felt and often spoken of. Remedies had frequently been proposed. I have known the subject brought forward in Congress, or agitated in private, ever since I have had the honor of a seat upon this floor. I believe, sir, a great and just deference for the author of the ancient scheme, prevented any innovation upon its material principles; there was no gentleman who felt that deference more than myself, nor should I have ever hazarded a change upon speculative opinion. But practice had discovered defects which might well escape the most discerning mind in planning the theory. The original system could not be more than experiment; it was built upon no experience. It was the first application of principles to a new state of things. The first judicial law displays great ability, and it is no disparagement of the author, to say its plan is not perfect.

I know, sir, that some have said, and perhaps not a few have believed, that the new system was introduced not so much with a view to its improvement of the old, as to the places which it provided for the friends of the administration. This is a calumny so notoriously false, and so humble, as not to require nor to deserve an answer upon this floor. It cannot be supposed, that the paltry object of providing for sixteen unknown men, could have ever offered an inducement to a great party, basely to violate their duty; meanly to sacrifice their character; and foolishly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This subject has not been correctly understood. It has every where been erroneously represented. I have heard much said about the additional courts created by the act of

last session. I perceive them spoken of in the President's message. In the face of this high authority, I undertake to state, that no additional court was established by that law. Under the former system, there was one supreme court, and there is but one now. There were seventeen district courts, and there are no more now. There was a circuit court held in each district, and such is the case at present. Some of the district judges are directed to hold their courts at new places, but there is still in each district but one district court. What, sir, has been done? The unnatural alliance between the supreme and district courts has been severed, but the jurisdiction of both those courts remains untouched. The power or authority of neither of them has been augmented or diminished. The jurisdiction of the circuit court has been extended to the cognizance of debts of four hundred dollars, and this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became necessary to create a new corps of judges. It was considered that the supreme court ought to be stationary, and to have no connexion with the judges over whose sentences they had an appellate jurisdiction.

To have formed a circuit court out of the district judges, would have allowed no court of appeal from the district court, except the supreme court, which would have been attended with great inconvenience. But this scheme was opposed by a still greater difficulty. In many districts the duties of the judge require a daily attention. In all of them, business of great importance may, on unexpected occurrences, require his presence.

This plan was thought of; it was well examined, and finally rejected, in consequence of strong objections to which it was liable. Nothing, therefore, remained, but to compose the circuit court of judges distinct from those of the other courts. Admitting

the propriety of excluding from this court the judges of the supreme and district courts, I think the late Congress cannot be accused of any wanton expense, nor even of a neglect of economy in the new establishment. This extensive country has been divided into six circuits, and three judges appointed for each circuit. Most of the judges have twice a year to attend a court in three states, and there is not one of them who has not to travel further, and who, in time, will not have more labor to perform than any judge of the state courts. When we call to mind that the jurisdiction of this court reaches the life of the citizen, and that in civil cases, its judgments are final to a large amount, certainly it will not be said that it ought to have been composed of less than three judges. One was surely not enough, and if it had been doubtful whether two were not sufficient, the inconvenience which would have frequently arisen from an equal division of opinion, justifies the provision which secures a determination in all cases.

It was additionally very material to place on the bench of this court a judge from each state, as the court was in general bound to conform to the law and the practice of the several states.

I trust, sir, the committee are satisfied that the number of judges which compose the circuit court, is not too great, and that the legislature would have been extremely culpable to have committed the high powers of this court to fewer hands. Let me now ask, if the compensation allowed to these judges is extravagant? It is little more than half the allowance made to the judges of the supreme court. It is but a small proportion of the ordinary practice of those gentlemen of the bar, who are fit, and to whom we ought to look to fill the places. You have given a salary of two thousand dollars. The puisne judges of Pennsylvania, I believe, have more. When you deduct the expenses of the office, you will leave but a moderate compensation for service, but a scanty provision for a

family. When, Mr. Chairman, gentlemen coolly consider the amendments of the late law, I flatter myself their candor will at least admit that the present modification was fairly designed to meet and remedy the evils of the old system.

The supreme court has been rendered stationary. Men of age, of learning and of experience, are now capable of holding a seat on the bench; they have time to mature their opinions in causes on which they are called to decide, and they have leisure to devote to their books, and to augment their store of knowledge. It was our hope, by the present establishment of the court, to render it the future pride, and honor, and safety of the nation. It is this tribunal which must stamp abroad the judicial character of our country. It is here that ambassadors and foreign agents resort for justice; and it belongs to this high court to decide finally, not only on controversies of unlimited value between individuals, and on the more important collision of state pretensions, but also upon the validity of the laws of the state, and of this government. Will it be contended that such great trusts ought to be reposed in feeble or incapable hands? It has been asserted that this court will not have business to employ it. The assertion is supported neither by what is past, nor by what is likely to happen. During the present session of Congress at their last term, the court was fully employed for two weeks in the daily hearing of causes. But its business must increase. There is no longer that restraint upon appeals from the circuit court, which was imposed by the authority of the judge of the court to which the appeal was to be carried; no longer will the apprehension of a secret unavoidable bias in favor of the decision of a member of their own body, shake the confidence of a suitor, in resorting to this court, who thinks that justice has not been done to him in the court below. The progressive increase of the wealth and population of the country, will unavoidably swell the business of the court.

But there is a more certain and unfailing source of employment, which will arise in the appeals from the courts of the national territory. From the courts of original cognizance in this territory, it affords the only appellate jurisdiction. If gentlemen will look to the state of property of a vast amount in this city, they must be satisfied, that the supreme court will have enough to do for the money which is paid them.

Let us next consider, sir, the present state of the circuit courts.

There are six courts, which sit in twenty-two districts; each court visits at least three districts, some four. The courts are now composed of three judges of equal power and dignity. Standing on equal ground, their opinions will be independent and firm. Their number is the best for consultation, and they are exempt from the inconvenience of an equal division of opinion. But what I value most, and what was designed to remedy the great defect of the former system, is the identity which the court maintains. Each district has now always the same court. Each district will hereafter have a system of practice and uniformity of decision. The judges of each circuit will now study and learn and retain the laws and practice of their respective districts. It never was intended, nor is it practicable, that the same rule of property or of proceeding should prevail from New Hampshire to Georgia. The old courts were enjoined to obey the laws of the respective states. Those laws fluctuate with the will of the state legislatures, and no other uniformity could ever be expected, but in the construction of the constitution and statutes of the United States. This uniformity is still preserved by the control of the supreme court over the courts of the circuits. Under the present establishment, a rational system of jurisprudence will arise. The practice and local laws of the different districts may vary, but in the same district they will be uniform. The practice of each district will suggest improvements to the others,

the progressive adoption of which, will, in time, assimilate the systems of the several districts.

It is unnecessary, Mr. Chairman, for me to say any thing in relation to the district courts. Their former jurisdiction was not varied by the law of the last session.

It has been my endeavor, sir, to give a correct idea of the defects of the former judicial plan, and of the remedies for those defects introduced by the law now designed to be repealed. I do not pretend to say that the present system is perfect; I contend only that it is better than the old. If, sir, instead of destroying, gentlemen will undertake to improve the present plan, I will not only applaud their motives, but will assist in their labor. We ask only that our system may be tried. Let the sentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice, it has not yet been complained of; and as it is designed for the benefit of the people, how can their friends justify the act of taking it from them before they have manifested their disposition to part with it?

How, sir, am I to account for the extreme anxiety to get rid of this establishment? Does it proceed from that spirit, which, since power has been given to it, has so unrelentingly persecuted men in office who belonged to a certain sect? I hope there will be a little patience; these judges are old and infirm men; they will die; they must die: wait but a short time, their places will be vacant; they will be filled with the disciples of the new school, and gentlemen will not have to answer for the political murder which is now meditated.

I shall take the liberty now, sir, of paying some attention to the objections which have been expressed against the late establishment. An early exception, which, in the course of the debate, has been abandoned by most gentlemen, and little relied on by any one, is

the additional expense. The gentleman from Virginia stated the expense of the present establishment at one hundred and thirty-seven thousand dollars. On this head the material question is, not what is the expense of the whole establishment, but what will be saved by the repealing law on the table. I do not estimate the saving at more than twenty-eight thousand, five hundred dollars. You save nothing but the salaries of sixteen judges, of two thousand dollars each. From this amount is to be deducted the salary of a judge of the supreme court, which is three thousand, five hundred dollars. Abolishing the present system will not vary the incidental expenses of the circuit court. You revive a circuit court, whose incidental expenses will be equal to those of the court you destroy. The increased salaries of the district judges of Kentucky and Tennessee must remain. It is not proposed to abolish their offices, and the admissions upon the other side, allow that the salaries cannot be reduced.

If there were no other objection, the present bill could not pass without amendment, because it reduces the salaries of those judges, which is a plain, undeniable infraction of the constitution. But, sir, it is not a fair way of treating the subject, to speak of the aggregate expense. The great inquiry is, whether the judges are necessary, and whether the salaries allowed to them are reasonable? Admitting the utility of the judges, I think no gentleman will contend that the compensation is extravagant.

We are told of the expense attending the federal judiciary. Can gentlemen tell me of a government under which justice is more cheaply administered? Add together the salaries of all your judges, and the amount but little exceeds the emoluments of the chancellor of England. Ascertain the expenses of state justice, and the proportion of each state of the expense of federal justice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a system, expanded over the whole union, is to

cost no more than the establishment of a single state? Let it be remembered, sir, that the judiciary is an integral and co-ordinate part with the highest branches of the government. No government can long exist without an efficient judiciary. It is the judiciary which applies the law and enables the executive to carry it into effect. Leave your laws to the judiciaries of the states to execute, and my word for it, in ten years you have neither law nor constitution. Is your judiciary so costly that you will not support it? Why then lay out so much money upon the other branches of your government? I beg that it may be recollected that, if your judiciary costs you thousands of dollars, your legislature costs you hundreds of thousands, and your executive millions.

An objection has been derived from the paucity of causes in the federal courts, and the objection has been magnified by the allegation, that the number had been annually decreasing. The facts admitted, I draw a very different inference from my opponents. In my opinion, they furnish the strongest proof of the defects of the former establishment, and of the necessity of a reform. I have no doubt, nay, I know it to be a fact, that many suitors were diverted from those tribunals by the fluctuations to which they were subject. Allow me, however, to take some notice of the facts. They are founded upon the Presidential document, No. 8. Taking the facts as there stated, they allow upwards of fifty suits annually for each court. When it is considered that these causes must each have exceeded the value of five hundred dollars, and that they were generally litigated cases, I do not conceive that there is much ground to affirm, that the courts were without business. But, sir, I must be excused for saying, I pay little respect to this document. It has been shown by others in several points to be erroneous, and from my own knowledge, I know it to be incorrect. What right had the President to call upon the clerks to furnish him with the list of the suits which had

been brought, or were depending in their respective courts? Had this been directed by Congress, or was there any money appropriated to pay the expense? Is there any law which made it the duty of the clerks to obey the order of the executive? Are the clerks responsible for refusing the lists, or for making false or defective returns? Do we know any thing about the authenticity of the certificates made by the clerks? And are we not now aiming a mortal blow at one branch of the government, upon the credit, and at the instigation of another and a rival department? Yes, sir, I say at the instigation of the President, for I consider this business wholly as a Presidential measure. This document and his message, show that it originated with him; I consider it as now prosecuted by him, and I believe that he has the power to arrest its progress, or to accomplish its completion. I repeat that it is his measure. I hold him responsible for it; and I trust in God, that the time will come, when he will be called upon to answer for it as his act. And I trust the time will arrive, when he will hear us speaking upon the subject more effectually.

It has been stated as the reproach, sir, of the bill of the last session, that it was made by a party at the moment when they were sensible that their power was expiring and passing into other hands. It is enough for me, that the full and legitimate power existed. The remnant was plenary and efficient. And it was our duty to employ it according to our judgments and consciences for the good of the country. We thought the bill a salutary measure, and there was no obligation upon us to leave it as a work for our successors. Nay, sir, I have no hesitation in avowing, that I had no confidence in the persons who were to follow us. And I was the more anxious, while we had the means, to accomplish a work which I believed they would not do, and which I sincerely thought would contribute to the safety of the nation by giving strength and support to the constitution through the storm to which it

was likely to be exposed. The fears, which I then felt, have not been dispelled, but multiplied by what I have since seen. I know nothing which is to be allowed to stand. I observe the institutions of the government falling around me, and where the work of destruction is to end, God alone knows. We discharged our consciences in establishing a judicial system, which now exists, and it will be for those, who now hold the power of the government, to answer for the abolition of it, which they at present meditate. We are told, that our law was against the sense of the nation. Let me tell those gentlemen, they are deceived, when they call themselves the nation. They are only a dominant party, and though the sun of federalism should never rise again, they will shortly find men, better or worse than themselves, thrusting them out of their places. I know it is the cant of those in power, however they have acquired it, to call themselves the nation. We have recently witnessed an example of it abroad. How rapidly did the nation change in France; at one time Brissot called himself the nation; then Robespierre, afterwards Tallien and Barras, and finally Bonaparte. But their dreams were soon dissipated, and they awoke in succession upon the scaffold, or in banishment. Let not these gentlemen flatter themselves, that heaven has reserved to them a peculiar destiny. What has happened to others in this country, they must be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yesterday, it is theirs to-day, but to-morrow it may belong to others.

[Mr. Bayard here observed, that as the common hour of adjournment had gone by, he should take his seat in order to allow the committee to rise, if they thought proper. On the following day he resumed his argument.]

I owe to the committee the expression of my thanks for the patience with which they attended to the laborious discussion of yesterday.

It will be my endeavor, in the remarks which I have to offer upon the remaining point of the debate, to consume no time which the importance of the subject does not justify. I have never departed from the question before the committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an observation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground; and be assured, sir, I shall be guilty of no new digressions where I am not covered by the same justification.

I did think, that this was an occasion when the House ought to have been liberated from the dominion of party spirit, and allowed to decide upon the unbiased dictates of their understanding. The vain hope which I indulged, that this course would be pursued, was soon dissipated by the inflammatory appeal made by the gentleman from Virginia to the passions of his party. This appeal, which treated with no respect the feelings of one side of the House, will excuse recriminations which have been made, or which shall be retorted. We were disposed to conciliate, but gentlemen are deceived, if they think, that we will submit to be trampled on.

I shall now, sir, proceed to the consideration of the second point which the subject presents. However this point may be disguised by subtilties, I conceive the true question to be—has the legislature a right by law to remove a judge? Gentlemen may state their question to be—has the legislature a right by law to vacate the office of a judge? But, as in fact they remove the judges, they are bound to answer our question.

The question, which I state, they will not meet. Nay, I have considered it as conceded upon all hands, that the legislature have not the power of removing a judge from his office; but it is contended only, that the office may be taken from the judge. Sir, it is a principle in law, which ought, and I apprehend does.

hold more strongly in politics, that what is prohibited from being done directly, is restrained from being done indirectly. Is there any difference, but in words, between taking the office from a judge and removing a judge from the office? Do you not indirectly accomplish the end which you admit is prohibited? I will not say, that it is the sole intention of the supporters of the bill before us, to remove the circuit judges from their offices; but I will say, that they establish a precedent which will enable worse men than themselves to make use of the legislative power, for that purpose, upon any occasion. If it be constitutional to vacate the office, and in that way to dismiss the judge, can there be a question as to the power to re-create the office and fill it with another man? Repeal to-day the bill of the last session, and the circuit judges are no longer in office? To-morrow rescind this repealing act, (and no one will doubt the right to do it,) and no effect is produced, but the removal of the judges. To suppose that such a case may occur, is no vagary of imagination. The thing has been done, shamelessly done, in a neighboring state. The judges there held their offices upon the same tenure with the judges of the United States. Three of them were obnoxious to the men in power. The judicial law of the state was repealed, and immediately re-enacted, without a veil being thrown over the transaction. The obnoxious men were removed, their places supplied with new characters, and the other judges were re-appointed. Whatever sophistry may be able to show in theory, in practice there never will be found a difference in the exercise of the powers of removing a judge and of vacating his office.

The question, which we are now considering, depends upon the provisions contained in the constitution. It is an error of the committee, upon plain subjects to search for reasons very profound. Upon the present subject, the strong provisions of the constitution are so obvious, that no eye can overlook them.

'They have been repeatedly cited, and as long as the question stated is under discussion, they must be reiterated. There are two prominent provisions to which I now particularly allude. First, the judges shall hold their offices during good behaviour. Second, their compensation shall not be diminished during their continuance in office. These are provisions so clearly understood upon the first impression, that their meaning is rather obscured than illustrated by argument. What is meant, and what has been universally understood by the tenure of "good behaviour?" A tenure for life, if the judge commit no misdemeanor. It is so understood and expressed in England, and so it has always been received and admitted in this country. The express provision, then, of the constitution defines the tenure of a judge's office; a tenure during life. How is that tenure expressly qualified? By the good behaviour of the judge. Is the tenure qualified by any other express condition or limitation? No other. As the tenure is express, as but one express limitation is imposed upon it, can it be subject to any other limitation not derived from necessary implication? If any material provision in the constitution can in no other manner be satisfied, than by subjecting the tenure of this office to some new condition, I will then admit, that the tenure is subject to the condition.

Gentlemen have ventured to point out a provision which they conceived furnished this necessary implication. They refer to the power given to Congress, from time to time, to establish courts inferior to the supreme court. If this power cannot be exercised without vacating the offices of existing judges, I will concede, that those offices may be vacated. But on this head, there can be no controversy. The power has been, and at all times may be exercised, without vacating the office of any judge. It was so exercised at the last session of Congress; and I surely do not now dispute the right of gentlemen to establish as many new courts as they may deem expedient. The

power to establish new courts does not, therefore, necessarily imply a power to abolish the offices of existing judges, because the existence of those offices does not prevent an execution of the power.

The clause in the constitution, to which I have just alluded, has furnished to gentlemen their famous position, that, though you cannot remove a judge from his office, you may take the office from the judge. Though I should be in order, I will not call this a quibble, but I shall attempt, in the course of the argument, yet more clearly to prove that it is one. I do not contend, that you cannot abolish an empty office; but the point on which I rely is, that you can do no act which impairs the independence of a judge. When gentlemen assert, that the office may be vacated, notwithstanding the incumbency of the judge, do they consider that they beg the very point which is in controversy? The office cannot be vacated without violating the express provision of the constitution in relation to the tenure.

The judge is to hold the office during good behaviour. Does he hold it when it is taken from him? Has the constitution said, that he shall hold the office during good behaviour, unless Congress shall deem it expedient to abolish the office? If this limitation has been omitted, what authority have we to make it a part of the constitution?

The second plain, unequivocal provision on this subject is, that the compensation of the judge shall not be diminished during the time he continues in office. This provision is directly levelled at the power of the legislature. They alone could reduce the salary. Could this provision have any other design than to place the judge out of the power of Congress? And yet how imperfect and how absurd the plan. You cannot reduce a part of the compensation, but you may extinguish the whole. What is the sum of this notable reasoning? You cannot remove a judge from the office, but you may take the office from the judge. You cannot take the compensation from

the judge, but you may separate the judge from the compensation.

If your constitution cannot resist reasoning like this, then indeed is it waste paper.

I will here turn aside, in order to consider a variety of arguments drawn from different sources, on which gentlemen on the other side have placed a reliance. I know of no order in which they can be classed, and I shall, therefore, take them up as I meet with them on my notes. It was urged by the honorable member from Virginia, to whom I have so frequently referred, that what was created by law, might by law be annihilated. In the application of his principle, he disclosed views which, I believe, have not been contemplated by gentlemen of his party. He was industrious to show, that not only the inferior courts, but the supreme court derives its existence from law. The President and legislature exist under the constitution. They came into being without the aid of a law. But though the constitution said, there should be a supreme court, no judges could exist till the court was organized by a law. This argument, I presume, was pushed to this extent, in order to give notice to the judges of the supreme court of their fate, and to bid them prepare for their end.

I shall not attempt to discriminate between the tenure of the offices of the judges of the supreme and inferior courts. Congress has power to organize both descriptions of courts, and to limit the number of judges, but they have no power to limit or define the tenure of office. Congress creates the office; the President appoints the officer, but it is neither under Congress nor the President, but under the constitution, that the judge claims to hold the office during good behaviour. The principle asserted does not in this case apply; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow, that the tenure of the office might be vacated by law. But the principle is not sound. I will show a variety of cases which will prove its fallacy. Among

the obnoxious measures of the late administration, was the loan of five millions, which was funded at eight *per centum*. The loan was created by a law and funded by a law. Is the gentleman prepared to say, that this debt, which was funded by a law of the former legislature, may be extinguished by a law of the present? Can you, by calling the interest of this debt exorbitant and usurious, justify the reduction of it? Gentlemen admit, that the salary of a judge, though established by a law, cannot be diminished by a law. The same thing must be allowed with respect to the salary of the President. Sir, the true principle is, that one legislature may repeal the act of a former, in cases not prohibited by the constitution. The correct question, therefore, is, whether the legislature are not forbidden, by the constitution, to abridge the tenure of a judicial office?

In order to avoid cases of a nature similar to those which I have put, the gentleman from Kentucky, (Mr. Davis,) and after him the gentleman from Virginia, endeavored to draw a distinction between laws executed and laws executory.

The distinction was illustrated by reference to the case of a state admitted by a law into the union. Here it is said the law is executed, and *functus officio*, and if you repeal it, still the state remains a member of the union. But it was asked, by the gentleman from Kentucky, supposing a law made to admit a state into the union, at a future time, before the time of admission arrived, could not the law be repealed? I will answer the question to the satisfaction of the gentleman, by stating a case which exists. By an ordinance of Congress, in the year 1787, Congress ordained, that when the population within the limits of a state within the North Western Territory should amount to sixty thousand souls, the district should be admitted as a member of the union. Will the gentleman venture to doubt as to this case? Would he dare to tell the people of this country, that Congress had the power to disfranchise them?

'The law, in the case I refer to, is executory, though the event upon which it is to take effect is limited by population, and not by time.

But, sir, if there were any thing in the principle, it has no influence upon the case to which it has been applied. A law has created the office of a judge, the judge has been appointed and the office filled. The law is therefore executed, and upon the very distinction of the gentleman, cannot be repealed. The law, fixing the compensation, is executory, and so is that which establishes the salary of the President, but though executory, they cannot be repealed. The distinction, therefore, is idle, and leaves the question upon the ground of the repeal being permitted or prohibited by the constitution. I shall now advert, sir, to an argument urged with great force, and not a little triumph, by the honorable member from Virginia. This argument is derived from the word 'hold,' in the expression, the judge shall hold his office during good behaviour. It is considered as correlative to tenure. The gentleman remarks, that the constitution provides, that the President shall nominate the judge to his office, and when approved by the senate, shall commission him. It is hence inferred, that as the President nominates and commissions the judge, the judge holds the office of the President; and that when the constitution provides, that the tenure of the office shall be during good behaviour, the provision applies to the President, and restrains the power, which otherwise would result in consequence of the offices being holden of him, to remove the judges at will. This is an argument, sir, which I should have thought that honorable member would have been the last person upon this floor to have adopted. It not only imputes to the President royal attributes, but prerogatives, derived from the rude doctrines of the feudal law. Does the gentleman mean to contend, that the President of these states, like the monarch of England, is the fountain of honor, of justice and of office? Does he mean

to contend, that the courts are the President's courts, and the judges the President's judges? Does he mean to say, sir, that the chief magistrate is always supposed to be present in these courts, and that the judges are but the images of his justice? To serve the paltry purposes of this argument, would the gentleman be willing to infuse into our constitution, the vital spirit of the feudal doctrines? He does not believe, he cannot believe, that when the word 'hold' was employed, any reference was had to its feudal import. The language of the constitution furnishes no support to this feudal argument. These officers are not called the judges of the President, but the judges of the United States. They are a branch of the government equally important, and designed to be co-ordinate with the President. If, sir, because the President nominates to office, and commissions, the office is held of him; for a stronger reason, where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would escheat not to the United States, but to the President. In England, the tenure of lands and offices is derived from the same principle. All lands are held mediately or immediately of the crown, because they are supposed to have been originally acquired from the personal grant of the monarch. It is the same of office, as the king is supposed to be the source of all offices. Having the power to grant, he has a right to define the terms of the grant. These terms constitute the tenure. When the terms fail, the tenure ceases, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witnessed an attempt, so bold, and strong to incorporate in our constitution a rank monarchical principle. If, sir, the principle of our constitution on this subject be republican and not monarchical, and the judges hold their offices of the United States, and not of the President, then the application of his argument has all the force against the gentleman, which he

designed it should have against his adversaries. For if the office be held of the United States, and the tenure of good behaviour was designed to restrain the power of those of whom the office was holden, it will follow, that it was the intention to restrain the power of the United States.

We have been told by gentlemen, that the principles we advocated tended to establish a sinecure system in the country. Sir, I am as little disposed to be accessory to the establishment of such a system, as any gentleman on this floor. But let me ask how this system is to be produced? We established judicial offices, to which numerous and important duties were assigned. A compensation has been allowed to the judges, which no one will say is immoderate, or disproportioned to the service to be rendered. These gentlemen first abolish the duties of the offices, then call the judges pensioners, and afterwards accuse us of establishing sinecures. There are no pensioners at present; if there should be any, they will be the creatures of this law. I have ever considered it as a sound and moral maxim, that no one should avail himself of his own wrong. It is a maxim, which ought to be equally obligatory upon the public as upon the private man. In the present case, the judge offers you his service. You cannot say it is not worth the money you pay for it. You refuse to accept the service; and after engaging to pay him while he continued to perform the service, you deny him his compensation, because he neglects to render services which you have prevented him from performing. Was injustice ever more flagrant? Surely, sir, the judges are innocent. If we did wrong, why should they be punished and disgraced? They did not pass the obnoxious law, they did not create the offices, they had no participation in the guilty business; but they were invited upon the faith of government, to renounce their private professions, to relinquish the emolument of other employments, and to enter into the service of the United States. who engaged

to retain them during their lives, if they were guilty of no misconduct. They have behaved themselves well, unexceptionably well, when they find the government rescinding the contract made with them, refusing the stipulated price of their labor, dismissing them from service, and in order to cover the scandalous breach of faith, stigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this House, who would not revolt at such conduct in private life? Is there one who would feel himself justified, after employing a person for a certain time, and agreeing to pay a certain compensation, to dismiss the party from the service upon any caprice which altered his views, deny him the stipulated compensation, and abuse him with opprobrious names, for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia, (Mr. Giles,) to force to his aid the statute of 13th Wm. III. I call it a bold attempt, because the gentleman was obliged to rely upon his own assertion to support the ground of his argument. He stated, that the clause in the constitution was borrowed from a similar provision in the statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England, at an earlier period, the judges held their commissions during the good pleasure of the monarch. The parliament desired, and the king consented, that the royal prerogative should be restrained: that the offices of the judges should not depend on the will of the crown alone, but upon the joint pleasure of the crown and of parliament. The king consented to part with a portion of his prerogative by relinquishing his power to remove the judges without the advice of his parliament. But, by an express clause in the statute, he retained the authority to remove them by the advice of his parliament. Suppose the clause had been omitted, which reserved the right to remove upon the address of the two houses

of parliament, and the statute had been worded in the unqualified language of our constitution, that the judges should hold their offices during good behaviour, would not the prerogative of removal have been abolished altogether? I will not say that the honorable member has been peculiarly unfortunate in the employment of this argument, because, sir, it appears to me, that most to which he has had recourse, when justly considered, have operated against the cause they were designed to support.

The gentleman tells us, that the constitutional provision on this subject was taken from the statute of William. Will he answer me this plain question? Why do we find omitted in the constitution, that part of the statutory provision, which allowed the judges to be removed upon the address of the two branches of the legislature? Does he suppose that the clause was not observed? Does he imagine that the provision was dropped through inadvertency? Will he impute so gross a neglect to an instrument, every sentence, and word, and comma, of which, he has told us was so maturely considered, and so warily settled? No, sir, it is impossible; and give me leave to say, that if this part of the constitution were taken from the statute, (and the gentleman from Virginia must have better information on the subject than I have,) that a stronger argument could not be adduced, to show that it was the intention of those who framed the constitution, by omitting that clause in the statute which made the judges tenants of their office at the will of parliament, to improve in this country the English plan of judicature. by rendering the judges independent of the legislature. And I shall have occasion, in the course of my observations, to show, that the strongest reasons derived from the nature of our government, and which do not apply to the English form, require the improvements to be made.

Upon this point, sir, we may borrow a few additional rays of light from the constitutions of Pennsylvania.

of Delaware and of some other states. In those states it has been thought, that there might be misconduct on the part of a judge, not amounting to an impeachable offence, for which he should be liable to be removed. Their constitutions, therefore, have varied from that of the United States, and rendered their judges liable to be removed upon the address of two thirds of each branch of the legislature. Does it not strike every mind, that it was the intention of those constitutions to have judges independent of a majority of each branch of the legislature; and I apprehend, also, that it may be fairly inferred, that it was understood in those states, when their constitutions were formed, that even two thirds of each branch of the legislature would not have the power to remove a judge, whose tenure of office was during good behaviour, unless the power was expressly given to them by the constitution. I cannot well conceive of any thing more absurd, in an instrument designed to last for centuries and to bind the furious passions of party, than to fortify one pass to judicial independence, and to leave another totally unguarded against the violence of legislative power.

It has been urged, by the gentleman from Virginia, that our admission, that Congress has a power to modify the office of a judge, leads to the conclusion, that they have the power to abolish the office; because, by paring away their powers, they may at length reduce them to a shadow, and leave them as humble and as contemptible as a court of *piepoudre*. The office of a judge consists of judicial powers which he is appointed to execute. Every law which is passed, increases or diminishes those powers, and so far modifies the office; nay, it is competent for the legislature to prescribe additional duties or to dispense with unnecessary services, which are connected with the office of judge. But this power has its bounds. You may modify the office to any extent which does not affect the independence of the judge. The judge is to hold the

office during good behaviour; now modify as you please, so that you do not infringe this constitutional provision.

Do you ask me to draw a line and say, thus far you shall go and no further? I admit no line can be drawn. It is an affair of sound and *bona fide* discretion. Because a discretion on the subject is given to the legislature, to argue upon the abuse of that discretion, is adopting a principle subversive of all legitimate power.

The constitution is predicated upon the existence of a certain degree of integrity in man. It has trusted powers liable to enormous abuse, if all political honesty be discarded. The legislature is not limited in the amount of the taxes which they have a right to impose, nor as to the objects to which they are to be applied. Does this power give us the property of the country, because by taxes we might draw it into the public coffers, and then cut up the treasury and divide the spoils? Is there any power, in respect to which a precise line can be drawn, between the discreet exercise and the abuse of it?

I can only say, therefore, on this subject, that every man is acquitted to his own conscience, who *bona fide* does not intend, and who sincerely does not believe, that by the law which he is about to pass, he interferes with the judges holding their offices during good behaviour.

I am now brought, Mr. Chairman, to take notice of some remarks which fell from the gentleman from Virginia, which do not belong to the subject before us; but are of sufficient importance to deserve particular attention. He called our attention, in a very impressive manner, to the state of parties in this House, at the time when the act of the last session passed. He describes us in a state of blind paroxysm, incapable of discerning the nature or tendency of the measures we were pursuing; that a majority of the House were struggling to counteract the expression of the public will, in relation to the person who was to be the chief magistrate of the country.


I did suppose, sir, that this business was at an end; and I did imagine, that as gentlemen had accomplished their object, they would have been satisfied. But as the subject is again renewed, we must be allowed to justify our conduct. I know not what the gentleman calls an expression of the public will. There were two candidates for the office of President, who were presented to the House of Representatives with equal suffrages. The constitution gave us the right and made it our duty to elect that one of the two, whom we thought preferable. A public man is to notice the public will as constitutionally expressed. The gentleman from Virginia, and many others, may have had their preference; but that preference of the public will did not appear by its constitutional expression. Sir, I am not certain that either of those candidates had a majority of the country in his favor. Excluding the state of South Carolina, the country was equally divided. We know that parties in that state were nearly equally balanced, and the claims of both the candidates were supported by no other scrutiny into the public will, than our official return of votes. Those votes are very imperfect evidence of the true will of a majority of the nation. They resulted from political intrigue, and artificial arrangements.

When we look at the votes, we must suppose that every man in Virginia voted the same way. These votes are received as a correct expression of the public will. And yet we know, that if the votes of that state were apportioned according to the several voices of the people, that at least seven out of twenty-one would have been opposed to the successful candidates. It was the suppression of the will of one third of Virginia, which enables gentlemen now to say, that the present chief magistrate is the man of the people. I consider that as the public will, which is expressed by constitutional organs. To that will I bow and submit. The public will, thus manifested, gave to the House of Representatives the choice of the two men for President. Neither of them was the man whom I wished

to make President: but my election was confined by the constitution to one of the two, and I gave my vote to the one whom I thought was the greater and better man. That vote I repeated, and in that vote I should have persisted, had I not been driven from it by imperious necessity. The prospect ceased of the vote being effectual, and the alternative only remained of taking one man for President, or having no President at all. I chose, as I then thought, the lesser evil.

From the scene in this House, the gentleman carried us to one in the senate. I should blush, sir, for the honor of the country, could I suppose that the law, designed to be repealed, owed its support in that body to the motives which have been indicated. The charge designed to be conveyed, not only deeply implicates the integrity of individuals of the senate, but of the person who was then the chief magistrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commissions issued for offices not created by the bill before them, but which that bill, by the promotions it afforded, was likely to render vacant. He has considered the scandal of the transaction as aggravated by the issuing of commissions for offices not actually vacant, upon the bare presumption that they would become vacant, by the incumbents accepting commissions for higher offices which were issued in their favor. The gentleman has particularly dwelt upon the indecent appearance of the business, from two commissions being held by different persons at the same time for the same office.

I beg that it will be understood, that I mean to give no opinion as to the regularity of granting a commission for a judicial office, upon the probability of a vacancy before it is actually vacant: but I shall be allowed to say, that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office as relating to the date of the



commission. The officer is allowed his salary from that date, upon the principle that the commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse, but where there was a suspicion of abuse, I presume the government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect, in the case of a commission for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant from the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time. From the moment, therefore, that you consider the office of circuit judge as filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission; if the contingency does not happen, the grant is void. If this reasoning be sound, it was not irregular, in the late administration, after granting a commission to a district judge, for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge.

I now return, sir, to that point of the charge which was personal in its nature, and of infinitely the most serious import. It is a charge, as to which we can only ask, is it true? If it be true, it cannot be excused; it cannot be palliated, it is vile, profligate corruption, which every honest mind will execrate. But, sir, we are not to condemn, till we have evidence of the fact. If the offence be serious, the proof ought to be plenary. I will consider the evidence of the fact upon which the honorable member has relied, and I will show him, by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the senate, Mr. Read, of South Carolina, and Mr. Green, of Rhode Island, who voted in favor of the law of last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the President, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more charity in the case which I am about to mention, and he will for once admit, that public men ought not to be condemned, upon loose conclusions drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that scene I had my part; it was a part not barren of incident, and which has left an impression which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member, what his reflections and belief will be, when he observes, that every man, on whose vote the event of the election hung, has since been distinguished by presidential favor. I fear, sir, I shall violate the decorum of parliamentary proceeding, in the mentioning of names; but I hope the example which has been set me, will be admitted as an excuse. Mr. Charles Pinckney, of South Carolina, was not a member of the House, but he was one of the most active, efficient and successful promoters of the election of the present chief magistrate. It was well ascertained, that the votes of South Carolina were to turn the equal balance of the scales. The zeal and industry of Mr.

Pinckney had no bounds. The doubtful politics of South Carolina were decided, and her votes cast into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed minister plenipotentiary to the court of Madrid; an appointment as high and honorable as any within the gift of the executive. I will not deny, that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or services of Mr. Charles Pinckney. In the House of Representatives, I know what was the value of the vote of Mr. Claiborne, of Tennessee. The vote of a state was in his hands. Mr. Claiborne has since been raised to the high dignity of governor of the Mississippi Territory. I know how great, and how greatly felt, was the importance of the vote of Mr. Linn, of New Jersey. The delegation of the state consists of five members. Two of the delegation were decidedly for Mr. Jefferson; two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of his district conferred upon him. Mr. Lyon, of Vermont, was, in this instance, an important man. He neutralized the vote of Vermont. His absence alone would have given the vote of a state to Mr. Burr. It was too much to give an office to Mr. Lyon; his character was low. But Mr. Lyon's son has been handsomely provided for in one of the executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew, the consequence of this gentleman. His means were not limited to his own vote: nay, I always considered more than the vote of New York within his power. Mr. Livingston has been made the attorney for the district of New York: the road of preferment has been opened to him, and his brother has been raised to the distinguished place of minister plenipotentiary to the French Republic.

This catalogue might be swelled to a much greater magnitude ; but I fear, Mr. Chairman, were I to proceed further, it might be supposed, that I myself harbored the uncharitable suspicions of the integrity of the chief magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my design alone to banish from the mind of the honorable member from Virginia. It would be doing me great injustice to suppose, that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present chief magistrate ; or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made ; my motive is of an opposite nature. The late President appointed gentlemen to office to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure. This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present executive, leaving scarcely an exception, has appointed to office, or has by accident, indirectly gratified every man who had any distinguished means in the competition for the presidential office, of deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they had derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from any suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the committee, who entertain his suspicions as to the conduct of the late executive, to review the ground of those suspicions, and to consider, that in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence, in the purity and fairness of the executive conduct.

I return again to the subject before the committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this House. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight by gentlemen on the other side. It is said, that if the courts are sanctuaries, and the judges cannot be removed by law, it would be in the power of a party to create a host of them, to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the legitimate exercise of it: as well might it be urged, that a subsequent Congress had a right to reduce the salary of a judge, or of the President, fixed by a former Congress; because, if the right did not exist, one Congress might confer a salary of five hundred thousand, or a million of dollars, to the impoverishment of the country. It will be time enough to decide upon those extreme cases, when they occur. We are told, that the doctrine we contend for, enables one legislature to derogate from the power of another. That it attributes to a former a power which it denies to a subsequent legislature.

This is not correct. We admit, that this Congress possesses all the power possessed by the last Congress. That Congress had a power to establish courts; so has the present. That Congress had not, nor did it claim the power to abolish the office of a judge while it was filled. Though they thought five judges, under the new system, sufficient to constitute the supreme court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee than district judges, they did not lay their hands upon the offices of the six judges. We, therefore, deny no power to this Congress which was not denied to the last. An honorable member from Vir-

ginia seriously expressed his alarm, lest the principles we contended for should introduce into the country a privileged order of men. The idea of the gentleman supposes, that every office not at will, establishes a privileged order. The judges have their offices for one term; the President, the senators and members of this House, for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees, that the President, the senators and the members of this House, belong to privileged orders, I shall give myself no trouble to deny, that the judges fall under the same description; and I believe that the gentleman will find it difficult to show, that in any other manner they are privileged. I did not suppose, that this argument was so much addressed to the understandings of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression, by the honorable member from Virginia, to whom I last referred, that the position, that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed, which was described, in glowing language, to have inflicted a gaping wound on the constitution, and to have stained, with its blood, the pages of our statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our statute book the blood with which they were stained. It will be an easy task to show to you the constitution without a wound, and the statute book without a stain.

It is, sir, the twenty-seventh section of the bill of the last session, which the honorable member considers as having inflicted the ghastly wound on the constitution, of which he has so feelingly spoken. That section abolishes the ancient circuit courts. But, sir, have we contended, or has the gentleman shown, that the constitution prohibits the abolition of a court,

when you do not materially affect, or in any degree impair the independence of a judge? A court is nothing more than a place where a judge is directed to discharge certain duties. There is no doubt you may erect a new court and direct it to be holden by the judges of the supreme or of the district courts. And if it should afterwards be your pleasure to abolish that court, it cannot be said, that you destroy the offices of the judges by whom it was appointed that the courts should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at Yorktown, in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined that the office of any judge was affected. Let me suppose that a state is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case, will it be said, that the office of the judge is destroyed, or his independence affected? The error into which gentlemen have fallen on this subject, has arisen from their taking for granted what they have not attempted to prove, and what cannot be supported, that the office of a judge and any court in which he officiates, are the same thing. It is most clear, that a judge may be authorized and directed to perform duties in several courts, and that the discharging him from the performance of duty in one of those courts, cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put. There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the supreme and of the district courts. The judges of these two courts were associated and directed to perform certain duties: when associated, and in the per-

formance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is, that the judges of the supreme and district courts are discharged from the performance of the joint duties which were previously imposed upon them. But is the office of one judge of the supreme or of the district courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behaviour? On this point, it was further alleged by the same honorable member, that the law of the last session inflicted another wound on the constitution, by abolishing the district courts of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the legislature to avoid the infringement of the offices of those judges. I believe the gentleman went so far as to charge us with appointing by law those judges to new offices.

The law referred to, establishes a circuit comprehending Kentucky, Tennessee and the district of Ohio. The duties of the court of this circuit, are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the legislature had done with respect to all the district judges, what they have done with respect to those of Kentucky and Tennessee, I am quite certain that the present objection would have appeared entirely groundless. Had they directed that all the circuit courts should be held by the respective judges within the circuits, gentlemen would have clearly seen, that this was only an imposition of a new duty, and not an appointment to a new office.

It will be recollected, that under the old establishment, the district judges of Kentucky and Tennessee,

were invested generally with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains; his office both nominally and substantially exists, and he holds it now as he did before, during good behaviour. I will refer gentlemen to different provisions in the late law, which will show beyond denial, that the legislature carefully and pointedly avoided the act of abolishing the offices of those judges.

The seventh section of the law provides, that the court of the sixth circuit shall be composed of a circuit judge, "and the judges of the district courts of Kentucky and Tennessee." It is afterwards declared, in the same section, "that there shall be appointed in the sixth circuit, a judge of the United States, to be called a circuit judge, who, together with the district judges of Tennessee and Kentucky, shall hold the circuit courts hereby directed to be holden within the same circuit." And finally, in the same section, it is provided, "that whenever the office of district judge in the districts of Kentucky and Tennessee respectively shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit, who, together with the circuit judge first aforesaid, shall compose the circuit court of the said circuit." When the express language of the law affirms the existence of the office and of the officer, by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the office is abolished? They who are not satisfied upon this point, I despair of convincing upon any other.

Upon the main question, whether the judges hold their offices at the will of the legislature, an argument

of great weight, and according to my humble judgment, of irresistible force, still remains.

The legislative power of the government is not absolute but limited. If it be doubtful whether the legislature can do what the constitution does not explicitly authorize; yet there can be no question, that they cannot do what the constitution expressly prohibits. To maintain, therefore, the constitution, the judges are a check upon the legislature. The doctrine I know is denied, and it is, therefore, incumbent upon me to show that it is sound.

It was once thought by gentlemen, who now deny the principle, that the safety of the citizen and of the states rested upon the power of the judges to declare an unconstitutional law void. How vain is a paper restriction if it confers neither power nor right. Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any constitution remain? Does not the power of the legislature become absolute and omnipotent? Can you talk to them of transgressing their powers, when no one has a right to judge of those powers but themselves? They do what is not authorized, they do what is inhibited, nay, at every step, they trample the constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree. They tell us they are friendly to the existence of the states; that they are the friends of federative, but the enemies of a consolidated general government, and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a cou-

solidated government, with unlimited power, upon the ruins of the state governments.

Nothing can be more absurd than to contend, that there is a practical restraint upon a political body, who are answerable to none but themselves for the violation of the restraint, and who can derive, from the very act of violation, undeniable justification of their conduct.

If, Mr. Chairman, you mean to have a constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the legislature which contravened the instrument.

Does the power reside in the states? Has the legislature of a state a right to declare an act of Congress void? This would be erring upon the opposite extreme. It would be placing the general government at the feet of the state governments. It would be allowing one member of the union to control all the rest. It would inevitably lead to civil dissension and a dissolution of the general government. Will it be pretended, that the state courts have the exclusive right of deciding upon the validity of our laws?

I admit they have the right to declare an act of Congress void. But this right they enjoy in practice, and it ever essentially must exist, subject to the revision and control of the courts of the United States. If the state courts definitively possessed the right of declaring the invalidity of the laws of this government, it would bring us in subjection to the states. The judges of those courts, being bound by the laws of the state, if a state declared an act of Congress unconstitutional, the law of the state would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of obligation upon all the states, which should attend every law of this government. If a law were declared void in one state, it would exempt the citizens of that state from its operation, whilst

obedience was yielded to it in the other states. I go further, and say, if the states or state courts had a final power of annulling the acts of this government, its miserable and precarious existence would not be worth the trouble of a moment to preserve.

It would endure but a short time, as a subject of derision, and wasting into an empty shadow, would quickly vanish from our sight. Let me now ask, if the power to decide upon the validity of our laws resides with the people. Gentlemen cannot deny this right to the people. I admit they possess it. But if, at the same time, it does not belong to the courts of the United States, where does it lead the people? It leads them to the gallows. Let us suppose that Congress, forgetful of the limits of their authority, pass an unconstitutional law. They lay a direct tax upon one state and impose none upon the others. The people of the state taxed, contest the validity of the law. They forcibly resist its execution. They are brought by the executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the court are bound by the law, and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the United States the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder; it is also declared in the constitution, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the party attainted." Let us suppose that Congress pass a bill of attainder, or they enact, that any one attainted of treason shall forfeit, to the use of the United States, all the estate which he held in any lands or tenements.

The party attainted is seized and brought before a federal court, and an award of execution passed against him. He opens the constitution and points to this line, "no bill of attainder or *ex post facto* law shall be passed." The attorney for the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing the law or the constitution invalid. It is left to them only to say, that the law vacates the constitution, or the constitution avoids the law. So, in the other case stated, the heir, after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law, by which it is confiscated, is shown. The constitution gave no power to pass such a law. On the contrary, it expressly denied it to the government. The title of the heir is rested on the constitution, the title of the government on the law. The effect of one destroys the effect of the other; the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature to which I might allude. There is the case of the privilege of *habeas corpus*, which cannot be suspended but in times of rebellion or of invasion. Suppose a law prohibiting the issuing of the writ at a moment of profound peace. If, in such case, the writ were demanded of a court, could they say, it is true the legislature were restrained from passing the law, suspending the privilege of this writ, at such a time as that which now exists, but their mighty power has broken the bonds of the constitution, and fettered the authority of the court? I am not, sir, disposed to vaunt, but standing on this ground, I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that in a collision between a law and the constitution, the judges are bound to support the law, and annul the constitution. Can the gentlemen relieve themselves from this dilemma? Will they say, though a judge has no power to pronounce a law

void, he has a power to declare the constitution invalid?

The doctrine, for which I am contending, is not only clearly inferable from the plain language of the constitution, but by law has been expressly declared and established in practice since the existence of the government.

The second section of the third article of the constitution expressly extends the judicial power to all cases arising under the constitution, the laws, &c. The provision in the second clause of the sixth article, leaves nothing to doubt—"This constitution, and the laws of the United States, which shall be made in pursuance thereof, &c., shall be the supreme law of the land." The constitution is absolutely the supreme law. Not so the acts of the legislature. Such only are the law of the land as are made in pursuance of the constitution.

I beg the indulgence of the committee one moment, while I read the following provision from the twenty-fifth section of the judicial act of the year 1789: "A final judgment or decree in any suit in the highest court of law or equity of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, &c., may be re-examined and reversed or affirmed in the supreme court of the United States, upon a writ of error." Thus, as early as the year 1789, among the first acts of the government, the legislature explicitly recognized the right of a state court to declare a treaty, a statute, and an authority exercised under the United States, void, subject to the revision of the supreme court of the United States; and it has expressly given the final power to the supreme court to affirm a judgment which is against the validity, either of a treaty, statute, or an authority of the government.

I humbly trust, Mr. Chairman, that I have given

abundant proofs, from the nature of our government, from the language of the constitution, and from legislative acknowledgment, that the judges of our courts have the power to judge and determine upon the constitutionality of our laws.

Let me now suppose, that, in our frame of government, the judges are a check upon the legislature; that the constitution is deposited in their keeping. Will you say afterwards, that their existence depends upon the legislature? That the body whom they are to check has the power to destroy them? Will you say that the constitution may be taken out of their hands, by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit, that the judges are a check upon the legislature, and yet to contend, that they exist at the will of the legislature? A check must necessarily imply a power commensurate to its end. The political body, designed to check another, must be independent of it, otherwise there can be no check. What check can there be when the power, designed to be checked, can annihilate the body which is to restrain it?

I go further, Mr. Chairman, and take a stronger ground. I say, in the nature of things, the dependence of the judges upon the legislature, and their right to declare the acts of the legislature void, are repugnant, and cannot exist together. The doctrine, sir, supposes two rights—first, the right of the legislature to destroy the office of the judge, and the right of the judge to **vacate the act of the legislature.** You have a right to abolish, by a law, the offices of the judges of the circuit courts: they have a right to declare the law void. It unavoidably follows, in the exercise of these rights, either that you destroy the rights, or that they destroy the rights. This doctrine is a harmless absurdity, it is a dangerous heresy. It is a doctrine which cannot be justified without creating, not discord only, but anarchy. If you

bill upon your table, the judges have a constitutional right to declare it void. I hope they will have courage to exercise that right; and if, sir, I am called upon to take my side, standing acquitted, in my conscience and before my God, of all motives but the support of the constitution of my country, I shall not tremble at the consequences.

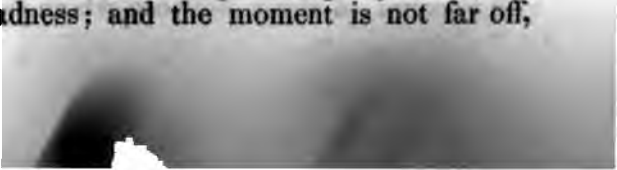
The constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause, before they take this rash step. There are many, very many, who believe, if you strike this blow, you inflict a mortal wound on the constitution. There are many now willing to spill their blood to defend that constitution. Are gentlemen disposed to risk the consequences? Sir, I mean no threats; I have no expectation of appalling the stout hearts of my adversaries; but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbors and their friends. Will they risk civil dissension, will they hazard the welfare, will they jeopardize the peace of the country, to save a paltry sum of money, less than thirty thousand dollars?

Mr. Chairman, I am confident that the friends of this measure are not apprised of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the stability of the government, rest upon the maintenance of the independence of the judiciary. It is not of half the importance in England, that the judges should be independent of the crown, as is with us, that they should be independent of the legislature. Am I asked, would you render the judges superior to the legislature? I answer, no, but co-ordinate. Would you render them independent of the legislature? I answer, yes, independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society, require this independence: not, sir, on account of the judge; that is a small consideration, but on account of those between whom he is to decide.

You calculate on the weaknesses of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is, therefore, essential to the purity of your judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society, as that of the judiciary. The life and property of every man is liable to be in the hands of the judges. Is it not our great interest to place our judges upon such high ground, that no fear can intimidate, no hope seduce them? The present measure humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are asked, sir, if the judges are to be independent of the people? The question presents a false and delusive view. We are all the people. We are, and as long as we enjoy our freedom, we shall be divided into parties. The true question is, shall the judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public confidence and respect.

The judges will be supported by their partizans, who, in their turn, will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness; and the moment is not far off,



when this fair country is to be desolated by a civil war.

Do not say, that you render the judges dependent only on the people. You make them dependent on your President. This is his measure. The same tide of public opinion which changes a President, will change the majorities in the branches of the legislature. The legislature will be the instrument of his ambition, and he will have the courts as the instrument of his vengeance. He uses the legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the judiciary was the felicity of our constitution. It was this principle which was to curb the fury of party on sudden changes. The first moments of power, gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the judiciary which was to control the fiery zeal, and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her national assembly, more numerous and equally popular with our own. She had her tribunals of justice, and her juries. But the legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the constitution.

SPEECH OF DE WITT CLINTON,

DELIVERED IN THE SENATE OF THE UNITED STATES,
FEBRUARY 23, 1803,

On the following resolutions : *Resolved*, That the United States of America have an indisputable right to the free navigation of the river Mississippi, and to a convenient deposit for their produce and merchandize in the island of New Orleans :

That the late infraction of such their unquestionable right is an aggression, hostile to their honor and interest :

That it does not consist with the dignity or safety of this union to hold a right so important by a tenure so uncertain :

That it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength and prosperity of these states, that they obtain complete security for the full and peaceful enjoyment of such their absolute right :

That the President be authorized to take immediate possession of some place or places, in the said island, or the adjacent territories, fit and convenient for the purposes aforesaid, and to adopt such measures for obtaining that complete security, as to him, in his wisdom, shall seem meet :

That he be authorized to call into actual service any number of the militia of the states of South Carolina, Georgia, Tennessee, Kentucky and Ohio, and the Mississippi territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the naval and military force of the union, for effecting the object abovementioned ; and that the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions, and that the whole or any part of that sum be paid or applied on warrants, drawn in pursuance of such directions as the President may from time to time think proper to give to the secretary of the treasury.*

MR. PRESIDENT,

THE extraordinary manner, in which the subject, now under consideration, has been introduced ; the extraordinary manner in which it has been treated, and

* By the treaty of 1795, between the United States and Spain, the free navigation of the river Mississippi, and a privilege of deposit in the island of New Orleans, for three years, were secured to the citizens of the United States.

The treaty stipulated that this privilege should be continued after

the extraordinary nature of the proposition itself, would justify a latitude and severity of remark, which, however, I am not disposed to indulge upon this occasion. I know that I address myself to a very respectable portion of the collected wisdom and patriotism of my country: I will, therefore, leave the honorable members from Pennsylvania and Delaware, (Mr. Ross and Mr. White,) in the undisturbed possession of their inflammatory appeals and declamatory effusions, and will manifest a becoming respect for the high authority to which I have the honor to speak, by moving on the ground of argument and of fact. To prevent losing myself in so spacious a field, I will consider the subject under three distinct heads: first, the injuries alleged to have been committed on the part of Spain: second, the nature, character and tendency of the remedy proposed: third, its justice and policy.

The importance of a free navigation of the Mississippi has been duly appreciated by the government; and a constant eye has been kept upon it, in our negotiations with foreign powers. An attempt was, indeed, made, under the old confederation, to barter it away for twenty-five years, which, however, was efficiently controlled by the good sense and patriotism of the government. By the treaty of peace with Great Britain, in 1783, by the treaty of amity, commerce and navigation with her, in 1794, and by the treaty of friendship, limits and navigation with Spain, in 1795, the right of a free navigation of the Mississippi is recognized, and declared to exist, from its source to the ocean, in the citizens of the United States. By the

the expiration of the three years, if, during that time, it was found not to be prejudicial to the interests of Spain. And it was further stipulated, that if it should not be continued there, an equivalent establishment should be assigned at some other place upon the bank of the Mississippi.

In October, 1802, the Intendant of New Orleans issued a proclamation, prohibiting the citizens of the United States from depositing their merchandize, &c. at New Orleans, without assigning any other equivalent establishment according to the provisions of the treaty.

twenty-second article of the treaty with Spain, it is declared, that "in consequence of the stipulations contained in the fourth article, his Catholic majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandize and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores. And his majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment." The twenty-second article, granting the right of deposit, is, therefore, founded upon the fourth article recognizing the right of free navigation, and is intended to give full and complete efficacy to it. By a proclamation of the Intendant of the province of Louisiana, dated the 16th of October last, the right of deposit is prohibited. The reason assigned for this daring interdiction is, that the three years, for which it was granted, having expired, it cannot be continued without an express order from the king of Spain. And, at the same time, no equivalent establishment is assigned according to the stipulations of the treaty.

There can be no doubt but that the suspension of the right of deposit at New Orleans, and the assignment of another place equally convenient, ought to have been contemporaneous and concurrent; that the conduct of the Intendant is an atrocious infraction of the treaty, and that it aims a deadly blow at the prosperity of the western states; but it is extremely questionable whether it was authorized by the government of Spain or not. On this subject I am free to declare, that I entertain great doubts, which can only be cleared up by the course of events, or perhaps it will ever be enveloped in darkness. On the one hand, the terms of the proclamation, indicating a misunderstanding of the treaty, the remonstrances of the governor of the

province, whose authority does not extend to commercial and fiscal affairs, over which the Intendant has an exclusive control, and the prompt and decided assurances of the Spanish minister near the United States, would induce a belief, that the act of the Intendant was unauthorized. On the other hand, it cannot readily be believed that this officer would assume such an immense responsibility, and encounter an event so big with important consequences, not only to his country, but to himself, without knowing explicitly the intentions of his government. Such then, is the true state of the Spanish aggression: an important right has been secured to our citizens by the solemnity of a treaty; this right has been withdrawn by an officer of the Spanish government, and whether this aggression was directed by it or not, is not as yet known. Other aggressions have, indeed, been stated by the honorable gentleman from Pennsylvania, (Mr. Ross,) in order to darken the picture, and with the manifest design of exasperating our feelings, inflaming our passions, and prompting an immediate appeal to the sword. That gentleman has mentioned, that great and unwarrantable spoliations have been committed upon our commerce by Spain, and that redress is refused. The depredations, previous to the treaty of 1795, were satisfactorily provided for in it, and those subsequent are in a favorable train of negotiation and adjustment. If it were permitted to me to draw aside the veil which covers our executive proceedings, I could establish, to the satisfaction of every person present, that the honorable mover has wandered widely from candor and the convictions of his own knowledge, in his representations on this subject. I will, at present, content myself with giving an unqualified contradiction to his declarations, and do cheerfully appeal to the information within the power of every member of the senate, for the accuracy of my assertion. I am fully satisfied that the court of Madrid has not only entertained, but has manifested in her negotiations every disposition to

maintain inviolate the relations of amity with this country. When, therefore, the honorable mover proceeded to state, that several of our citizens had been seized and imprisoned by the colonial authorities of Spain, I might ask, whether any government in the world pretended to protect her citizens in the violation of the laws of other nations? Whether our citizens, in the situation he has represented, had not been concerned in illicit trade, and in violating the laws of the Spanish colonies? Instances may have indeed occurred, where innocent persons have been unjustly dealt with; and whenever representations to this effect shall be made to our government, I have no doubt but that ample redress will be instantly demanded and insisted upon. Nothing has been laid before us which can authorize the assertions made on this subject. Whenever such conduct shall be brought home to Spain, and prompt and complete satisfaction denied, I shall then consider it the duty of the government to vindicate the rights of our citizens at all hazards; and I cannot but congratulate the honorable mover, and the other side of the House, on the resurrection of that ardent zeal in favor of their oppressed countrymen, which has so long and so soundly slept over British and French enormities.

As to the nature, character and tendency of the remedy proposed, there can be but one opinion. It proposes to enter the country of a foreign nation, with a hostile force, and to seize a part of its territory. It is not preceded by a formal declaration, and cannot, therefore, come under the denomination of a solemn war; but it partakes of the character of a war not solemn. It answers to the definition of war, by Burlamaqui, "a nation taking up arms with a view to decide a quarrel;" to that given by Vattel, who represents it to be, "that state in which a nation prosecutes its right by force." A state of general hostilities would as necessarily follow, as an effect would follow a cause: no nation would submit to the irruption of a

hostile army, without repelling it by force: the proud Castilian, as described by the gentleman from Delaware, would revolt at the insult; the door of negotiation would be effectually closed, and as the appeal would be to arms, in the first instance, so the controversy must be finally decided by the preponderance of force. It would, therefore, not only have impressed me with a more favorable opinion of the honorable mover's candor, but also of his decision and energy as a statesman, if he had spoken out boldly, and declared his real object. War is unquestionably his design—his wish. Why then mask his propositions? Why then combine it with considerations connected with negotiation? Why not furnish the American people, at once, with the real and the whole project of himself and his friends? If it is bottomed on patriotism, and dictated by wisdom, it need not shrink from the touch of investigation; it will receive their approving voice, and be supported by all their force. The resolution is, then, to be considered as a war resolution; in no other light can it be viewed; in no other light ought it to be viewed; and in no other light will it be viewed by the intelligence of the country.

In this point of view, I will proceed to consider its justice and policy, its conformity with the law and usage of nations, and the substantial interests of this country.

I shall not attempt to occupy your attention by threadbare declamation upon the evils of war, by painting the calamities it inflicts upon the happiness of individuals, and the prosperity of nations. This terrible scourge of mankind, worse than the famine or pestilence, ought not to be resorted to, until every reasonable expedient has been adopted to avert it. When aggressions have been committed by the sovereign or representatives of the will of a nation, negotiation ought, in all cases, to be first tried, unless the rights of self-defence demand a contrary course. This is the practice of nations, and is enjoined by the

unerring monitor which the God of nature has planted in every human bosom. What right have the rulers of nations to unsheath the sword of destruction, and to let loose the demon of desolation upon mankind, whenever caprice or pride, ambition or avarice, shall prescribe? And are there no fixed laws, founded in the nature of things, which ordain bounds to the fell spirit of revenge, the mad fury of domination, and the insatiable thirst of cupidity? Mankind have, not only in their individual character, but in their collective capacity as nations, recognized and avowed, in their opinions and actions, a system of laws calculated to produce the greatest happiness of the greatest number. And it may be safely asserted, that it is a fundamental article of this code, that a nation ought not to go to war, until it is evident, that the injury committed is highly detrimental, and that it emanated from the will of the nation, charged with the aggression, either by an express authorization in the first instance, or by a recognition of it, when called upon for redress, and a refusal, in both cases, to give it. A demand of satisfaction ought to precede an appeal to arms, even when the injury is manifestly the act of the sovereign; and when it is the act of a private individual, it is not imputable to his nation, until its government is called upon to explain and redress, and refuses; because the evils of war are too heavy and serious to be incurred, without the most urgent necessity; because remonstrance and negociation have often recalled an offending nation to a sense of justice, and a performance of right; because nations, like individuals, have their paroxysms of passion, and when reflection and reason resume their dominion, will extend that redress to the olive-branch, which their pride will not permit them to grant to the sword; because a nation is a moral person, and as such, is not chargeable with an offence committed by others, or where its will has not been consulted; the unauthorized conduct of individuals being never considered a just ground of hostility, until

their sovereign refuses that reparation for which his right of controlling their actions, and of punishing their misconduct, necessarily renders him responsible. These opinions are sanctioned by the most approved elementary writers on the laws of nations. I shall quote the sentiments of some of them.

Vattel says: "Two things, therefore, are necessary to render it, (an offensive war,) just. First, a right to be asserted; that is, that a demand made on another nation be important and well grounded: second, that this reasonable demand cannot be obtained otherwise than by force of arms. Necessity alone warrants the use of force. It is a dangerous and terrible resource. Nature, the common parent of mankind, allows of it only in extremity, and when all others fail. It is doing wrong to a nation to make use of violence against it, before we know whether it be disposed to do us justice, or to refuse it. Those, who, without trying pacific measures, on the least motive run to arms, sufficiently show that justificative reasons, in their mouths, are only pretences; they eagerly seize the opportunity of indulging their passions, and of gratifying their ambition, under some color of right." It is subsequently stated by this admired writer, that "it is demonstrated in the foregoing chapter, that, to take arms lawfully, first, that we have a just cause of complaint: second, that a reasonable satisfaction has been denied us, &c."

Burlamaqui says, "However just reason we may have to make war, yet as it inevitably brings along with it an incredible number of calamities, and often injustices, it is certain, that we ought not to proceed too easily to a dangerous extremity, which may, perhaps, prove fatal to the conqueror himself. The following are the measures which prudence directs sovereigns to observe in these circumstances: first, supposing the reason of the war is just in itself, yet the dispute ought to be about something of great consequence to us; since it is better even to relinquish part of our right, when the thing is not considerable, than

to have recourse to arms to defend it. Second, we ought to have at least some probable appearance of success; for it would be a criminal temerity, and a real folly, wantonly to expose ourselves to certain destruction, and to run into a greater, in order to avoid a lesser evil. Lastly, there should be a real necessity for taking up arms; that is, we ought not to have recourse to force, but when we can employ no milder method of recovering our rights, or of defending ourselves from the evils with which we are menaced. These measures are agreeable not only to the principles of prudence, but also to the fundamental maxims of sociability, and the love of peace; maxims of no less force, with respect to nations, than individuals. By these a sovereign must, therefore, be necessarily directed; even the justice of the government obliges him to it, in consequence of the very nature and end of authority. For as he ought always to take particular care of the state, and of his subjects, consequently he should not expose them to all the evils with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms." In addition to these great authorities, permit me to refer severally to the opinions of two more modern writers, Martens and Paley. The former says, that all amicable means for redress must be tried in vain, before an appeal to arms, unless it is evident that it would be useless to try such means: and the latter is of opinion, that the only justifying causes of war are deliberate invasions of right, and maintaining the balance of power. It is not necessary to decide upon the justice of the last observation, because it does not apply to the case before us. But can any man lay his hand upon his heart, and declare that he believes the present case a deliberate invasion of right by the Spanish government? Can any man say, that it would be fruitless to attempt amicable means of redress, and that the sword alone can restore us to our rights?

The opinions of these celebrated writers are corro-

borated by the general usage of nations. A demand of redress, before the application of force, has been almost uniformly practised by the most barbarous, as well as the most civilized nations. Instances may, indeed, be found to the contrary, but they are to be considered as departures from established usage. The ancient Romans, who were a military nation, and who marched to empire through an ocean of blood, always demanded satisfaction from the offending nation before they proceeded to war, and fixed upon a certain time in which the demand was to be complied with; at the expiration of which, if redress was still withheld, they then endeavored to obtain it by force. It has been the general practice of the civilized nations of Europe to promulge manifestos justificatory of their conduct, in resorting to arms. These manifestos contain a full statement of their wrongs, and almost always declare that they had previously endeavored by negotiation to obtain a friendly adjustment of their complaints. What is this, but a declaration, that the law and the sense of nations demand this course? What is it, but an appeal to the intuitive sense of right and wrong, which exists in every human bosom? The reign of the present king of Great Britain has been emphatically a war reign. In 1760, he ascended the throne and found the nation at war with France. Besides his wars in the East and West Indies, almost half of his reign has been consumed in wars with this country, and some of the nations of Europe. He has been three times at war with France, three times with Spain, twice with Holland, and once with the United States. The most strange events—events, which have pleased and dazzled, astonished and terrified mankind, have passed upon the theatre of the world in his time. The ordinary maxims of policy, and the cardinal principles of action, have been reversed and prostrated. The world has seen the revival of the crusades, all the great powers of Europe in arms, and a destroying and desolating spirit go forth, unknown to past times. Por-

tentous as a portion of this reign has been, when a deviation from the established laws of nations might naturally be expected, and degraded as the power and condition of Spain is represented to be, I am willing to stake the whole controversy upon the reciprocal conduct of these governments to each other. Of all wars, one with Spain is the most popular in England, from the opportunities it affords for maritime spoliation, and lucrative enterprize. For the same reasons it is anxiously deprecated by Spain; and it has even grown into a Spanish proverb, "Peace with England, and war with the world." Notwithstanding the preponderating force of Great Britain, the allurements of popularity and cupidity, her great and extraordinary acquisition of maritime power, and the martial temper which has marked her character during the present reign—we find the very power, with whom we are now called upon to measure swords, meeting her propositions for negotiation or arms on the ground of perfect equality, maintaining a steady posture, and an erect attitude, passing through her collisions with unspotted reputation and unsullied dignity, and teaching us an instructive lesson, that while we ought never to bend into degrading compliances, we are not to expect that a nation, which has not yielded improperly to the power in the world most able to injure her, will tamely submit to the insulting and imperious measure recommended so earnestly to our adoption. Six controversies have occurred between Great Britain and Spain during the reign of the present king; three have terminated amicably by negotiation, and three have resulted in war. In 1761, when Great Britain was at war with France, a memorial was presented by the French ambassador at London to the English minister, which implicated some demands of Spain upon Great Britain, and which gave great offence to her ministry. A negotiation took place, which being attended with an insolent demand for a sight of a treaty concluded between France and Spain, and which being very properly re-

fused, a war ensued. Notwithstanding the conduct of Great Britain, in the course of this transaction, was precipitate and unjust, negociation was attempted before an appeal to arms: and the future disclosure of the real transaction furnished her with a salutary lesson; for it was afterwards found, that the treaty did not refer to the existing state of the belligerent powers, but that the guarantee, it contained, was not to operate until the termination of the war.

In the year 1770, the remarkable case of the Faulkland Islands occurred. Six years before, a settlement was made and a fort erected by the British government on one of them, with a view to accommodate navigators in refitting their ships and furnishing them with necessaries previous to their passage through the Straits of Magellan, or the doubling Cape Horn. This settlement gave great umbrage to Spain, not only on account of its interference with her claim of sovereignty to almost the whole southern continent of America, and the adjacent islands, but also on account of the facility it would afford, in case of a future war, to an attack upon her South Sea territories. Ineffectual remonstrances were made on the part of Spain, and at last, notwithstanding the claim of Great Britain by discovery and occupancy, an armed force was sent, the fort was taken, the settlement was broken up, and the honor of the British flag violated by the taking off of the rudder of a king's ship, and detaining it on shore twenty days. What course did the British pursue on this occasion? In this case the insult was flagrant; the honor of their flag, the dignity of the crown, and the commerce of the nation were implicated. Was the sword immediately unsheathed, and the door to peace effectually closed? No: negotiations ensued: a convention was formed. Spain disavowed the violence, and engaged to restore the possessions, but with an express declaration, that the restitution should not effect the question concerning the prior right of sovereignty. The islands were also evacuated three years

afterwards by Great Britain, in consequence of a secret agreement.

In 1779, Spain declared war against Great Britain, alleging unredressed depredations on her commerce, and that she was insulted in an attempt to negotiate between France and Great Britain. It is evident that this step on the part of Spain was in pursuance of the family compact; and was not justifiable by the laws of nations. It appears, however, that previous to taking this measure, she had attempted to attain her objects by negotiation.

In 1786, the long disputes, respecting the English settlements on the Mosquito shore and the coast of Honduras, were settled by negotiation. The English abandoned their Mosquito settlements, and many hundreds of families, who had inhabited them under the protection and faith of the British government, were peremptorily compelled to evacuate that country. The boundaries of the English Honduras settlements were enlarged, but in such a manner as to leave Spain in full possession of her territorial rights and exclusive dominion.

In 1790, the controversy about Nootka Sound arose. Two years before, a settlement was made there, by an association of British merchants, on land purchased from the natives with a view to carry on the fur trade. This interfering with the chimerical rights of Spain, a Spanish frigate was despatched by the viceroy of Mexico, which seized the fort, and captured the English vessels trading there. A negotiation took place, the vessels were restored, and the settlements agreed to be yielded back: but there was an express reservation, on the part of Spain, of the right of sovereignty for ulterior discussion. In 1796, Spain, in pursuance of a treaty of alliance offensive and defensive with France, declared war against Great Britain.

From this short narrative it will appear, that in almost every case negotiation was attempted, even when indignity and violence had been committed;

that in many instances it was successful; that in two of the three cases, where hostilities were commenced, Spain was unequivocally the aggressor; that in most of her adjustments she stood upon ground at least equal, and in some, superior to Great Britain; that in all of them she maintained a high sense of character and independence, and that, in points affecting the most delicate considerations of national honor, interest and right, and where occurrences of a very irritating nature had taken place, and more aggravated than the one of which we justly complain, the path of negotiation was deemed the path of honor by two of the great nations of Europe.

The practice of our government has been uniformly conformable with the principles I have endeavored to establish, and I trust I shall be excused for bestowing particular consideration on this subject. We have heard much of the policy of Washington; it has been sounded in our ears from all quarters, and an honorable gentleman from Delaware, (Mr. White,) has triumphantly contrasted it with that adopted by the present administration. I am not disposed to censure it in this case; on the contrary, I think it a high and respectable authority: but let it be properly understood, in order to be rightly appreciated, and it will be found, that the United States, under his administration, and that of his successor, have received injuries more deleterious, insults more atrocious, and indignities more pointed than the present, and that the pacific measure of negotiation was preferred. If our national honor has survived the severe wounds it then received, it may surely outlive the comparatively slight attack now made upon it; but if its ghost only now remains to haunt the consciences of the honorable gentlemen, who were then in power, and who polluted their hands with the foul murder, let them not attempt to transfer the odium and the crime to those who had no hand in the guilty deed. They then stood high in the councils of their country; the reins of government were in their hands; and if the course they at that time pursu-

ed, was diametrically opposite to that they now urge for our adoption, what shall we say of their consistency? What will they say of it themselves? What will their country say of it? Will it be believed, that the tinkling sounds and professions of patriotism, which have been so vehemently pressed upon us, are the emanations of sincerity, or will they be set down to the account of juggling imposture? Although but an infant nation, our career has been eventful and interesting. We have already had very serious collisions with three of the most powerful nations of Europe, who are connected with us by treaty, by neighborhood, and by commerce. Great Britain, France and Spain, have successively committed very great aggressions upon our national rights. In stating these, I have no intention of reviving feelings which, I trust, have ceased with the causes which gave them birth, nor of aspersing the characters of nations who certainly hold the most important and respectable station in the civilized world. Our differences with Great Britain were coeval with the treaty of peace. The detention of the western posts was a direct violation of that treaty: it diverted a considerable portion of the fur trade from the United States, and disabled us from bridling the hostile Indians, which was a source of immense injury. This evil continued for twelve years, under every circumstance of aggravation and insult. British soldiers issued from those forts into parts of our territory, where we exercised jurisdiction, and seized the persons of deserters, without the aid or sanction of the authorities of the country; and these possessions served as asylums for the savages who were in hostile array against us, and as storehouses and magazines to supply them with arms, ammunition and provisions. The seat of government of Upper Canada was also held for a time at Niagara, in the state of New York—an indignity of the most marked character. Many thousands of negroes were also carried off in violation of the treaty, and a very serious injury was thereby inflicted on the agricultural pursuits of our southern ci-

tizens. On the other hand, it was stated on the part of Great Britain, that the treaty was violated by the United States, for that impediments had been interposed against the recovery of British debts, by legislative acts and judicial decisions in several of the States. As there were mutual reclamations and reciprocal complaints, let us balance the account, and set off these grievances against each other: let us suppose that both parties acted right, and that no real cause of crimination existed, still I contend, that the conduct of Great Britain, independent of the inexecution of the treaty of peace, was much more aggravated than the case before us.

It is well known, that we were engaged in a bloody and expensive war with several of the Indian tribes; that two of our armies had been routed by them, and that we were finally compelled to make great efforts to turn the tide of victory. These Indians were encouraged and aided by the emissaries of Great Britain: British subjects were seen disguised, fighting in their ranks, and British agents were known to furnish them with provisions and the implements of war. The governor-general of Canada, a highly confidential and distinguished officer, delivered a speech to the seven nations of Lower Canada, exciting them to enmity against this country; but in order to furnish the savages at war with sufficient aid, a detachment of British troops penetrated into our territory and erected a fort on the Miami River. Here the Indians, dispersed and defeated by Wayne, took refuge, and were protected under the muzzles of British cannon. A violation of territory is one of the most flagrant injuries which can be offered to a nation, and would, in most cases, justify an immediate resort to arms, because, in most cases, essential to self-defence. Not content with exciting the savages of America against us, Great Britain extended her hostility to the eastern hemisphere, and let loose the barbarians of Africa upon us. A war existed at that time between Por-

tugal and Algiers. The former blocked up the mouth of the Straits, by her superior naval force, and prevented the pirates from a communication with the Atlantic. Portugal has been for a long time subservient to the views of Great Britain: a peace was effected through the mediation of the latter: our unprotected merchantmen were then exposed, without defence, to the piracies of Algiers. Thus, in three quarters of the globe we at one time felt the effects of British enmity. In the mean time, our commerce in every sea was exposed to her rapacity. All France was declared in a state of siege, and the conveyance of provisions expressly interdicted to neutrals. Paper blockades were substituted for actual ones, and the staple commodities of our country lay perishing in our storehouses, or were captured on the ocean, and diverted from the lawful proprietors. Our seamen were pressed wherever found. Our protections were a subject of derision, and opposition to the imperious mandates of their haughty tyrants, was punished by famine or by stripes—by imprisonment or by the gibbet. To complete the full measure of our wrongs, the November orders of 1793, were issued; our ships were swept from the ocean, as if by the operation of enchantment; hundreds of them were captured; almost all our merchants were greatly injured, and many of them reduced to extreme poverty. These proceedings, without even a pretext, without the forms of justice, without the semblance of equity, were calculated to inflame every American feeling, and to nerve every American arm. Negotiation was, however, pursued; an envoy extraordinary, in every sense of the word, was sent to demand redress, and a treaty of amity, commerce and navigation, was formed and ratified. These events took place under the administration of Washington. The Spanish treaty, concluded on the 27th of October, 1795, stipulated for a settlement of boundaries, and an adjustment of spoliation on commerce, and contained a declaration of the free navigation of the Mis-

Mississippi, and a grant of the privilege of deposit at New Orleans. 'This treaty,' for more than two years afterwards, was not executed on the part of Spain. In January, 1798, a report was made to Mr. Adams, by Mr. Secretary Pickering, and submitted to Congress, which charged Spain with retaining her troops and garrisons within the United States, with evading to run the boundary line, with stopping, controlling and regulating the passage of our citizens on the Mississippi, and with sending emissaries among the Indians, residing within our territories, in violation of the treaty and the relations of amity. Here, then, a treaty, securing the important benefit of deposit, was in a state of inexecution for a long period. Our citizens were also interrupted in the free navigation of the Mississippi; and other aggressions, affecting our territorial rights, and our internal peace, were superadded. Was it at that time proposed by the honorable gentlemen, who were then in power, as it now is, when they are deprived of it, to seize New Orleans with an armed force? Were they then so feelingly alive to the wrongs of our western brethren? Did they manifest that irritable sensibility for national honor, which is now thundered in our ears with such extraordinary emphasis? If it is right for us to act now in the way they propose, what will excuse them for not pursuing the same system then? Was their political vision darkened by the eminence on which they stood? And does it require the ordeal of adversity to open their eyes to a true sense of their country's honor and interest? Let them answer to their constituents, to their consciences, and to their God.

An amicable explanation was had with Spain, and our wrongs were satisfactorily redressed. This took place in the administration of Mr. Adams, and when most of the honorable gentlemen, who support this war resolution, except such as were dangling in the courts of Europe, held prominent stations in the councils of the country.

Our differences with France were of a more serious nature, and of a longer duration. They commenced in the administration of Mr. Washington, and were adjusted in that of his successor. Great and enormous depredations were committed upon our commerce by France, and our merchants were fraudulently robbed of compensation for provisions, supplied her in the hour of distress. The treaty and consular convention were violated. The right of embassy, a sacred right, respected even by the ferocious savage, was wantonly trampled upon; and the representative of our national sovereignty was refused a reception, and ignominiously ordered out of France. A fresh attempt at negotiation was made: three ministers were sent, armed with all the powers, and clothed with all the honors of diplomacy. They were also refused a hearing, and were forced to leave the country without experiencing the forms of common civility. The treaty was then annulled, and reprisals directed; and when the honorable gentlemen and their friends, then in power, had worked up the passions of the nation to the highest pitch of exasperation; when war, bloody war, was expected from all quarters; when the war-worn soldiers of the revolution were girding on their swords, and preparing to stand between their country and the danger that menaced her, the scene suddenly changed; the black cloud passed away; and we again beheld three ministers at Paris, extending the olive-branch, burying all animosities, and returning with a treaty of "firm, inviolable and universal peace, and true and sincere friendship." I shall not press this subject any further upon the feelings of the honorable gentlemen: I read in their countenances the emotions they experience.

I have thus shown, that the course, recommended for our adoption, is not warranted by the laws and usage of nations, nor by the practice of our government. I shall now examine whether it is not repugnant to the best interests of the country.

A vast augmentation of our national debt would be the certain consequence of this measure. It is a moderate estimate to say, that our annual expenditures, over and above our surplus revenue, would be twenty millions of dollars; and we cannot reasonably expect that the war would continue a shorter period than five years. Hence one hundred millions would be added to our debt, and the great experiment, which we are now trying of extinguishing it in fourteen years, would certainly fail—an experiment, which has been defeated in Europe by war and prodigality; and for the success of which, in this country, every friend of republican government looks up with the greatest anxiety. But this is not all; heavy and oppressive taxation would be necessary, in order to pay off the interest of the accumulating debt, and to meet the other exigencies of government. We are now a happy nation in this respect. Neither the temper nor the habits of our citizens will patiently submit to severe burdens, and happily the posture of our financial arrangements does not require them. Give the rein, however, to chimerical notions of war—embrace the proposition now submitted to us, and the weight of your impositions will be felt in every nerve and artery of our political system. Excises, taxes on houses and lands, will be reintroduced, and the evils of former administrations will be multiplied upon us. But the mischief will not stop here. With the increasing calls for money from the people, their means to satisfy them will be diminished. The superior naval force of the enemy would cripple our commerce in every quarter of the globe. Great Britain and Spain hold the keys of the Mediterranean. We should, therefore, be entirely shut out of that sea, unless we could persuade the former to unite her exertions with ours. With the decay of our commerce, with our exclusion from foreign markets, the labors of our farmers would be palsied, the skill of our manufacturers would be rendered useless, and, with the fruits of their industry perishing on their hands, or greatly


undersold, how would they be able to meet the augmented wants of government? What, in the mean time, would become of the claim of our merchants upon Spain, for at least five millions of dollars, and to what perils would your commercial cities be exposed? These certain evils would be encountered, without producing the least benefit to our western brethren. The seizure of New Orleans would vest us with a place of deposit: but a place of deposit, without the free navigation of the Mississippi, would be entirely useless. As long as the enemy holds the country below New Orleans, and possesses a superior naval force, so long we will be excluded from the Mississippi. Suppose, however, this obstacle removed—suppose we are enabled to pass into the Gulf without molestation, is it not necessary for vessels to hug the island of Cuba, on their passage to the Atlantic states? And will not this expose them to certain capture, as long as Spain retains that important possession? To secure the great object, said to be aimed at by this resolution, and to establish beyond the reach of annoyance, a free communication between the Atlantic and western states, we must seize, not only New Orleans, but the Floridas and Cuba; and we must immediately create a formidable navy. It is needless to mention that the Atlantic states are, with a few exceptions, the carriers of the western produce. Three fourths of that trade is managed by the merchants of the state I have the honor to represent. I therefore view this measure as pregnant with great mischief to the commerce of Atlantic America, and as a certain exclusion of the western states from market, as long as the war shall continue.

It is no slight objection in the minds of the sincere friends of republicanism, that this measure will have a tendency to disadjust the balance of our government, by strengthening the hands of the executive, furnishing him with extensive patronage, investing him with great discretionary powers, and placing under his direction a large standing army. It is the inevitable con-

sequence of war in free countries, that the power, which wields the force, will rise above the power that expresses the will of the people. The state governments will also receive a severe shock: those stately pillars which support the magnificent dome of our national government, will totter under the increased weight of the superincumbent pressure. Nor will the waste of morals, the spirit of cupidity, the thirst of blood, and the general profligacy of manners, which will follow the introduction of this measure, be viewed by the great body of our citizens, without the most fearful anxiety, and the most heartfelt deprecation. And if there are any persons in this country, and I should regret if there are any such in this House, who think that a public debt is a public blessing, and that heavy taxation is expedient in order to produce industry; who believe that large standing armies are essential to maintain the energy, and that extensive patronage is indispensable to support the dignity of government; who suppose that frequent wars are necessary to animate the human character, and to call into action the dormant energies of our nature; who have been expelled from authority and power by the indignant voice of an offended country, and who repine and suffer at the great and unexampled prosperity which this country is rapidly attaining under other and better auspices—such men, whoever they are, and wherever they be, will rally round the proposition now before us, and will extol it to the heavens, as the model of the most profound policy, and as the offspring of the most exalted energy.

If I were called upon to prescribe a course of policy most important for this country to pursue, it would be to avoid European connexions and wars. The time must arrive when we will have to contend with some of the great powers of Europe, but let that period be put off as long as possible. It is our interest and our duty to cultivate peace, with sincerity and good faith. As a young nation, pursuing industry in

every channel, and adventuring commerce in every sea, it is highly important that we should not only have a pacific character, but that we should really deserve it. If we manifest an unwarrantable ambition, and a rage for conquest, we unite all the great powers of Europe against us. The security of all the European possessions in our vicinity, will eternally depend, not upon their strength, but upon our moderation and justice. Look at the Canadas; at the Spanish territories to the south; at the British, Spanish, French, Danish and Dutch West India Islands, at the vast countries to the west, as far as where the pacific rolls its waves. Consider well the eventful consequences that would result, if we were possessed by a spirit of conquest. Consider well the impression, which a manifestation of that spirit will make upon those who would be affected by it. If we are to rush at once into the territory of a neighboring nation, with fire and sword, for the misconduct of a subordinate officer, will not our national character be greatly injured? Will we not be classed with the robbers and destroyers of mankind? Will not the nations of Europe perceive in this conduct the germ of a lofty spirit, and an enterprising ambition, which will level them to the earth, when age has matured our strength, and expanded our powers of annoyance, unless they combine to cripple us in our infancy? May not the consequences be, that we must look out for a naval force to protect our commerce, that a close alliance will result, that we will be thrown at once into the ocean of European politics, where every wave that rolls, and every wind that blows, will agitate our bark? Is this a desirable state of things? Will the people of this country be seduced into it by all the colorings of rhetoric, and all the arts of sophistry—by vehement appeals to their pride, and artful addresses to their cupidity? No, sir. Three fourths of the American people, I assert it boldly and without fear of contradiction, are opposed to this measure. And would you take up arms



with a mill-stone hanging round your neck? How would you bear up, not only against the force of the enemy, but against the irresistible current of public opinion? The thing, sir, is impossible; the measure is worse than madness; it is wicked, beyond the powers of description.

It is in vain for the mover to oppose these weighty considerations, by menacing us with an insurrection of the western states, that may eventuate in their seizure of New Orleans without the authority of government; their throwing themselves into the arms of a foreign power, or in a dissolution of the union. Such threats are doubly improper—improper as they respect the persons to whom they are addressed, because we are not to be terrified from the performance of our duty by menaces of any kind, from whatever quarter they may proceed; and it is no less improper to represent our western brethren as a lawless, unprincipled banditti, who would at once release themselves from the wholesome restraints of law and order; forego the sweets of liberty; and either renounce the blessings of self-government, or like the Goths and Vandals, pour down with the irresistible force of a torrent upon the countries below, and carry havoc and desolation in their train. A separation by a mountain, and a different outlet into the Atlantic, cannot create any natural collision between the Atlantic and western states: on the contrary, they are bound together by a community of interests, and a similarity of language and manners; by the ties of consanguinity and friendship, and a sameness of principles. There is no reflecting and well principled man in this country, who can view the severance of the states without horror; and who does not consider it as a Pandora's box which will overwhelm us with every calamity: and it has struck me with not a little astonishment, that on the agitation of almost every great political question, we should be menaced with this evil. Last session, when a bill repealing a judiciary act was under con-

sideration, we were told that the eastern states would withdraw themselves from the union, if it should obtain; and we are now informed, that if we do not accede to the proposition before us, the western states will hoist the standard of revolt and dismember the empire. Sir, these threats are calculated to produce the evil they predict, and they may possibly approximate the spirit they pretend to warn us against: they are at all times unnecessary, at all times improper, at all times mischievous, and ought never to be mentioned within these walls. If there be a portion of the United States peculiarly attached to republican government and the present administration, I should select the western states as that portion. Since the recent elections, there is not a single senator, or a single representative in Congress from that vast country, unfriendly to the present order of things; and except in a part of the Mississippi territory, (and its whole population did not by the last census, reach nine thousand souls,) there is scarcely the appearance of opposition. To represent a people so republican, so enlightened, and so firm in their principles, as ready, without any adequate cause, (for no government could watch over their interests with more paternal solicitude than the present, upon the present question,) to violate their plighted faith and political integrity, to detach themselves from the government they love, and to throw themselves under the protection of nations, whose political systems are entirely repugnant to their own, requires an extent of credulity rarely equalled, certainly never surpassed. If we examine the indications of public sentiment which have reached us, we see them breathing quite a contrary spirit. The legislatures of Kentucky and the Mississippi territory, have expressed full confidence in the conduct of the government, respecting the infraction of the treaty: Virginia, which embraces a respectable portion of western population, has done the same. The legislature of Tennessee has not been in session; but from the most recent and au-

thentic accounts, we have every reason to believe, that that state and the Indiana Territory are entirely satisfied with the position our government has taken. The infant state of Ohio has presented us with an address, couched in the warmest terms of affectionate attachment, equally honorable to her and to us ; and her recent elections have manifested the same decided spirit : out of forty-five members, returned to her first legislature, there are only five to be found in the opposition. Pennsylvania is the only remaining state which possesses any western territory ; and I need only refer you to her elections, to demonstrate the extraordinary attachment to the government, which prevails in that great and respectable state. In the next Congress, there will not be a single member in opposition from Pennsylvania, and her state elections have been attended with nearly the same distinguished unanimity. Under the influence of such honorable principles, and under the auspices of the great character, who so deservedly holds the reins of her government, and so extensively possesses the confidence of his fellow-citizens, we have nothing to apprehend, on her part, from the evils with which we have been so liberally menaced. Delaware, who has no western country, who carries on little or no trade with the western states, and who has no immediate interest in the present question, has indeed lifted up her voice against the measures of the general administration, and has demanded a more energetic course. I shall be the last man to speak disrespectfully of any of the state governments ; I mean not to disparage the conduct of Delaware, and I trust I do not, when I say that New York, which has a greater interest in the Spanish infraction than any of the Atlantic states, is entitled to equal attention ; and she has, through her legislature and executive, declared her warmest approbation of the course pursued by the general government on this interesting occasion.

It is equally in vain for the honorable mover to declare, that the seizure of New Orleans will facilitate

negociation, and avert war; that we will lose our character if we do not; that delay will give Spain time to prepare; that our executive has taken no course that we know of, and that the opposition will lend us their aid if we follow their advice. In opposition to these suggestions, we say that the seizure of New Orleans is war in fact, and will shut out negociation; that character is to be lost, not by firm and honorable moderation, but by rash and boyish precipitation; that delay is an evil that cannot be avoided, if we pursue the path of negociation, which is the course our government has taken, and that if it gives our adversary time for preparation, it will also furnish us with the same advantage; that however desirable it may be to produce an union of sentiment and action among our fellow-citizens, we are certain that it will not result from the adoption of the present measure; that the great body of the people will consider it rash and unjust; and that, in gaining the transient and doubtful support of a small minority, we will alienate the affections, and lose the confidence of our best friends, who will certainly desert us, when we desert the laudable principles which ought alone to entitle us to their esteem and attachment.

If negociation shall prove successful, and of this I have no doubt, all the evils resulting from war will be averted. If, on the contrary, it shall eventuate unfortunately, and we shall be compelled to face all consequences, and risk all dangers in the maintenance of our national honor and national rights, great and abundant advantages will still result from the pursuit of this course, and we will be enabled to appeal to the sword with a full conviction of the justice of our conduct, with the unanimous suffrage of our country, and to the perfect satisfaction of the world. In the mean time, we can form some necessary preparations, and we can ascertain the feelings and bearings of foreign governments. Every day of procrastination will find us better prepared, and will give us more people, more

resources, more treasure, more force, with less debt. Our national character will stand high for moderation and justice; our own citizens, and foreign nations, will entertain but one opinion on the subject; and we can then confidently appeal to that great and good Being, who holds in his hands the destiny of nations, to smile upon our cause: but, if in the inscrutable decrees of his providence, it is ordained that we must perish, we will at least fall with dignity, and maintain our character, when we lose our existence.

SPEECH OF JAMES ROSS,
ON
HIS RESOLUTIONS RELATIVE TO THE FREE NAVIGATION OF THE MISSISSIPPI,*

DELIVERED IN THE SENATE OF THE UNITED STATES.
FEBRUARY 24, 1803.



MR. PRESIDENT,

THE propriety of introducing these resolutions becomes every day more apparent. Since they have been laid on the table, our national councils have taken a new direction, and assumed a much more promising aspect. Until these resolutions were brought forward, there has been no military preparation; no proposal to detach militia; to build arsenals on the western waters; to provide armed boats for the protection of our trade on the Mississippi. I am happy in seeing gentlemen on the opposite side, pursuing a more vigorous course than they were at first inclined to adopt; and I hope they will, before long, consent to take stronger and more effectual measures for the security of what is in hazard.

As I have, on a late occasion, stated at large my reasons for presenting these resolutions, I will not detain the senate with a repetition of them, except where they have been misrepresented or distorted during the debate. I cannot suppose that any gentleman would intentionally misstate what has been said; but it is

* See page 236.

very certain, that sentiments and assertions have been ascribed to me, in the course of the discussion, not warranted by any thing I have advanced.

Every gentleman, who has spoken in this debate, excepting the honorable gentleman from Maryland, (Mr. Wright,) admits, that the United States have an indisputable right to the free navigation of the river Mississippi, and to a place of deposit in the island of New Orleans. All agree, that this right is of immense magnitude and importance to the western country. All agree, that it has been grossly and wantonly violated—and all agree, that unless the right be restored and secured, we must and will go to war. Upon what, then, do we really differ? Upon nothing but the time of acting—whether we shall take measures for immediate restoration and security, or whether we shall abstain from all military preparation, and wait the issue of negociation. There is no disagreement but upon this point; for if negociation fails, every man, who has spoken, has pledged himself to declare war.

A number of the objections, made against the adoption of measures we have proposed, deserve to be noticed.

The honorable gentleman from New York, (Mr. Clinton,) when composing his speech, has made an elaborate research into ancient and modern history, for the purpose of showing what had been the practice of nations. He has collected all the objections together and classed them under three heads. Other gentlemen, who have spoken in opposition, have taken nearly the same ground, and made, in substance, the same objection: I will, therefore, follow the arrangement made by the honorable gentleman, (Mr. Clinton,) and I am persuaded, that it will be easy to show, he has, in many instances, mistaken the most material features of the authorities he has adduced, and more than once misstated the positions which I undertook to refute. He has, however, admitted the magnitude of the right, that it has been violated, and that if ne-

gociation should fail, we must go to war. He has made objections under these three heads, and insisted: first, that the infraction may be unauthorized; second, that negociation ought, in all cases, to precede the employment of force; third, that reasons of policy should dissuade us from using force at present, even supposing we have just cause of immediate war.

The first objection has already been amply refuted by the gentleman from New Jersey, (Mr. Dayton,) the gentleman from Massachusetts, (Mr. J. Mason,) and the gentleman from Delaware, (Mr. White.) I will only remark, in addition, that whether authorized or not, is not now very material. If authorized, the temper, the design must certainly be that of an enemy, and you should act accordingly. If unauthorized, seize the culprit and send him home to his master, who will punish him for a breach of duty. Let him answer with his head for embroiling two friendly nations who wish to live in peace. Why wait till you send three thousand miles and inquire whether he had orders or not? He is visibly a wrongdoer: remove him, and protect what he would wrest from you. No man, when proceeding on the highway to market, and stopped by his neighbor's servant, would send out into the country to inquire whether his master had authorized the outrage. No, he would punish and remove the aggressor and proceed on his journey, leaving the circumstance of orders, or no orders, to be settled between himself and the master afterwards. Besides, in this instance, the person inflicting the injury, declares he has no right to the country. If so, why make inquiry whether he has orders? No orders could give him authority to interfere with your unquestionable right, where his master pretends to no right himself.

Under this head of aggression and spoliation, the senator from New York, (Mr. Clinton,) in a tone and manner not very decorous in debate, has declared it to be within my knowledge, that indemnity has been

provided by Spain, for the spoliations committed upon our trade; and yet the assertion has been made, that Spain has refused all redress for injuries of that kind; while the honorable gentleman alludes to documents before the senate, which are now under the injunction of secrecy.

Sir, I have seen those documents, and I now repeat and re-assert, that I know nothing to warrant the opinion or belief, that Spain will make compensation for all spoliations of our merchants, or for the greater part or mass of them. I certainly never did say, that Spain had refused all redress; for it will be recollected by all present, that I expressly stated, the other day, the injuries done to us by the Spaniards themselves, in every place they had found our flag; and that our vessels were carried into their ports by French cruisers, condemned without the semblance of a trial, and our citizens thrown into prison: that if we took possession of the country on the Mississippi, we should have an ample fund in our hands to compensate all our merchants who had suffered from the conduct of the Spaniards: that the merchants would willingly accept such an advantageous offer: and that otherwise there was no reason to hope that they would all be indemnified. And I now return to that gentleman his own words, that he does know, and must be sensible, from the very documents he has alluded to, that there is little, if any hope, that the great body of injuries and losses sustained by our merchants from the Spaniards, in different quarters of the world, and the conduct of the French in Spanish ports, will ever be compensated or paid by Spain, unless in the mode that I have suggested.

The same gentleman has said, that we have no facts respecting Spanish spoliation authenticated and reported to us, and offers this as a further reason for delay and negotiation. The facts of spoliation, and vexatious, oppressive conduct towards our merchants and seamen, as well on the sea as within the jurisdiction of

the Spanish government, both in Europe and America, are so notorious and of such extent and continuance, that no man can really doubt, or with truth deny the aggravated series of outrage and oppression which we have experienced. Although the executive or other officers of government may not have collected and reported these complaints to this House, yet this forms no excuse for the aggressors, much less a reason why we should abstain from giving attention to them while considering indignities of another description. But, that the gentleman may never again be able to say, that he has met with no authenticated case of spoliation by the Spaniards. I will now produce and read one to the senate, which has been delivered to me for the purpose of obtaining the aid of our government to get reparation. The men who have been robbed, were industrious inhabitants of the western country, who lived near Pittsburg. They descended the Mississippi with a cargo of flour, and finding but a low market at New Orleans, shipped their flour on board of an American vessel, and after being two or three days at sea, were taken by Spanish vessels, carried into Campeachy, their flour sold, their captain cast into prison, themselves restrained of their liberty; nay, sir, several of them died in their captivity; and those, who returned home, had no allowance made to them by the Spaniards for their property thus unjustly captured, and of course they only returned to witness the ruin of their families by a loss of property which they had not the means of paying for, having purchased on credit. There can be no excuse for the capture: these men lived in the interior country, they were cleared out from a Spanish port in an American vessel; yet all these circumstances could not save them from the rapacity of the Spaniards.

[Here Mr. Ross read the protest of several American citizens before Mr. Morton, the American consul at Havanna, stating the capture of their vessel, their captivity at Campeachy, the loss of all their property.

and that they lived in the western country, from which they had gone down the Ohio with this flour to New Orleans.]

Herein is a case of prodigious hardship and oppression arising out of the very trade and intercourse, which the Spaniards have at last undertaken to obstruct and destroy; and therefore I think it proper to be brought forward during this discussion, to show the temper and the conduct of these people towards us, before they had proceeded to the last extremities.

The second objection taken by the gentleman from New York (Mr. Clinton,) and indeed by all who have spoken against the resolutions, amounts to this: that every nation is bound to demand satisfaction for an injury before it employs force for redress; and that a refusal of satisfaction must precede the use of force.

However humane or salutary the general principle may be, certainly it does not hold universally, or to the extent that gentleman contends. No book, no writer of authority, has ever contended that this principle should operate, when the essential rights, the well-being, or the peace of the country are exposed to danger; and the rule has no application but to inferior or minor rights of society, where delay and negotiation might be safely resorted to. No man can reasonably say, that this rule would hold, where an army was marching to your frontier, or landed upon your territory; or a fleet was blockading your harbors, or demanding contribution from your sea-ports. Such cases admit of no negotiation; the intention of the assailant is manifest, the danger imminent, and immediate use of force and hostility unavoidable by the most peaceable nation. It will be said, that these are extreme cases and only form exceptions to the general rule. They certainly demonstrate that the rule is not so general as gentlemen contend for; and when the case, at present under consideration, is carefully examined, it will be found among those essential and all important rights of the

nation, which, when attacked, demand that immediate force should be employed to repel the assailant. In cases of invasion, the mere possession of a small portion of your soil, is not the primary consideration ; you are impressed with the approach of further and more serious injury. The hostile intention is manifest, the act such as to leave no doubt, and your right such as can never be abandoned. So here, though there be no actual aggression within the limits of your territory, yet you have a territorial right attached to your soil and constituting its only value, which is directly attacked and destroyed. Of what value is the territory when stripped of this right ? Where is your independence, where is your sovereignty in that country without the unrestrained exercise of this right ? Without it, the mere soil is of no value. It is an attribute inseparable from the substance. To attack it, is to attack your very existence ; for it is the great artery of the western country, a stoppage in the circulation through which, endangers convulsion and political death. The destruction of this right is a greater calamity than a blockade of a sea-port, or even a landing on the Atlantic coast. The mischief is incurable. Shall it then be said, when this vital part of the nation is assailed, that you ought to wait for information of the intent ? Will you not inquire into the motives ? Will you not employ force to resist the attack, although you may be undone before you can receive an answer ? Will you hazard convulsion and dissolution, because possibly the aggressor has reasons to offer for the outrage that you do not yet know ? This cannot be wise, it cannot be the course which national honor or safety calls upon us to pursue ; because you never can abandon the right now denied and wrested out of your hands ; you can no more abandon it, than any other portion of country within your territorial limits, when invaded by an enemy.

But in whose favor is this delay asked ? With whom are you going to negotiate for reparation of the in-

jury? Why, with those who, by their own confession, have no right in the country from which they exclude you. When you inquire of the court of Spain what has led them to this outrage, they may reply, we know and care nothing about it; that country is no longer ours, we have abandoned all claim to it, and ordered our officers to withdraw; the title is now in another. Will this satisfy you? Will this redress the injury? Where will you go next? Or how long will you wait for an answer to the question of who turned us out of doors and keeps us out? You have the same reasons for a second as for the first delay; and in the meanwhile, you are out of actual possession, and the wrongdoer is in.


But, sir, we are triumphantly told, that it has been the practice of all civilized nations to negotiate before they go to war. Round assertions, like general rules, are always to be received with exceptions and great allowance. I dispute the fact, although my argument does not need this kind of aid; for I am persuaded there is no precedent of an independent nation relying upon negotiation alone, in such circumstances. If you go to books, or to the example of other countries, you will find no *dictum* of a writer, nor instance of a state, that will justify the course now held by gentlemen on the other side. For wherever the nation has been invaded, its vital interests attacked, its existence drawn into hazard, its essential rights exposed to immediate destruction, every writer and every state will bear you out in resorting, without delay, to the strongest means in your power for repelling the aggressor.

The conduct of the Romans has been more than once mentioned. Their history is handed down to us by themselves, and even in that we shall too often find, that while their ministers of peace were affecting to demand reparation, the consul had advanced with his eagles to the frontier, and was ready to enter the country where the negotiation was pending: we shall find, that they negotiated often and long, when it did

not suit them to commence an immediate attack ; and the negotiations, especially when at a distance, were protracted, until their armies had been recruited, wars nearer home ended, and every thing ready to strike a decisive blow. But you have no instance of negotiation without military preparation, where the Roman territory was invaded, or a Roman treaty violated.

Leaving antiquity, the honorable gentleman (Mr. Clinton,) has adduced and extolled the example of England in modern times, and traced her through many scenes both of negotiation and war. But he did not dwell upon her conduct in the beginning of the war of 1756, when all the commerce of France was destroyed by a general sweep, without a previous declaration of war : and yet this was so certainly the case, that the gentleman must well remember it formed a subject of complaint, and was used to protract the negotiation for a general peace in 1763. He has also forgotten their conduct towards the Dutch during our revolutionary war ; and their late armament against the Danes. His comments also upon the conduct of their ministry in 1762, are peculiarly unfortunate, because we know, that the nation was afterwards actually obliged to declare war against Spain, when she had full notice of their intention, and time to prepare for the attack ; whereas, had war been waged, when the hostility of Spain and her secret alliance with France were first ascertained, they would have possessed prodigious advantages which were lost by ineffectual negotiation and delay.

I will not follow the gentleman to Nootka Sound, to the Bay of Honduras or the Musquito Shore ; but I will at once admit, that in cases of minor rights, of spoliation upon commerce in time of war, nay, in all cases that do not involve the wellbeing or national independence, negotiation and amicable adjustment should be resorted to ; and demand of reparation should precede actual hostility. I will even say, that



were the Spaniards to cross the Mississippi at the Falls of St. Anthony, and build a fort on our side of the river, place a garrison in it, and thus actually invade our territory; in my opinion, we ought to negotiate and demand explanations before we sent troops to demolish the fort. Although the act would justify the immediate use of force, yet the station is so remote, and of so little importance in the use of it, that friendly means might be safely and wisely resorted to in the first instance.

Quitting Europe, the gentleman exultingly appeals to the usages of our own country, in cases which he alleges were either similar to, or stronger than the present. The name of WASHINGTON is introduced to silence all further dispute on this question! Sir, I reverence the authority of that great man's official conduct. He was the father of his country, the terror of its enemies, and the ornament of human nature. He is now gone to mix with the heroes and sages of other times and nations in a happier world; but it was easily foreseen, that those, who seldom agreed with him in his life, would be the first after his death, to fly for shelter to his example, when overtaken by calamity or misfortune. That man led the armies of this country to victory—to independence. He knew, better than any man, the interests, the feelings, the dispositions of the people. He witnessed the origin and progress of complaints on both sides, respecting the inexecution of the treaty of peace between us and Great Britain. We justly reproached them with detention of the western posts, and their refusal to deliver up our slaves, as stipulated by treaty. They replied that we did not pay them our old debts. These disputes became the subject of negotiation under the old confederation, and we had a minister in that country who attempted an amicable adjustment. When General Washington came to the head of our present government, he sent another minister to that country, and while he was endeavoring a peaceable accommodation, a storm broke

out in France, which soon spread beyond its own boundaries, and involved the neighboring nations in war. The rulers of France, wishing to engage us in their quarrel, sent a minister to this country with express instructions to embroil us, if possible, in this desolating war. Unfortunately, that minister possessed abilities and disposition well adapted to such a mission. He landed in a part of our country remote from the seat of government, and instantly began to issue his commissions to our citizens, not only to equip privateers and plunder the commerce of nations with whom we were at peace, but to enlist men and raise a military force within the United States, for the purpose of attacking the possessions of Spain in Florida. He travelled onward from Charleston towards the seat of government, making proselytes as he advanced, and gaining new adherents at every step of his journey. He was received with acclamations of the liveliest joy in the capital city of this country: and after employing all the soothing art of fraternization, civic feasts, and public spectacles, he proceeded, as before, with his commissions, and actually insisted upon and exercised the right of bringing into our ports and selling prizes, taken from nations with whom we were at peace. This minister had the address to seduce many of our citizens to enlist under his banner; and but too many, even of our respectable men in high employment, applauded his conduct and gave his measures a countenance they did not deserve. All ranks seemed pleased with the zeal and the boldness of the minister's mind, and an union of this country with France in the war seemed inevitable, as no effectual steps had been taken to restrain this wild, extravagant condition of things among us. I mention not these events with a wish to hurt the sensibility of any one. for I know that this country was then without experience; we had never before been in the relation of neutrality towards powers at war, and we entertained a lively affection for France, because she had aided us in the revo-

lution war, and was then, as we thought, contending for liberty herself. The respectable men, who, led away by their feelings, joined in the phrensy of that time, would not now display such opinions, or enter upon any public act to commit or endanger the peace and honest neutrality of their country.

Very unfortunately, however, we had then here a minister from Great Britain, who was but little inclined to promote good understanding, and who, probably, transmitted discolored accounts of all that passed from day to day. Things were sufficiently wrong, without any exaggeration of their enormity. When the accounts reached England, is it wonderful, that they considered war as begun? Is it strange that they should count upon hostility, when the acts of the people assumed but one complexion; when the government had not taken means to do justice and prevent such injustice; where their ships were sold by their enemies, and every indignity put upon their subjects? Hence, we may trace the orders for spoliations; hence, the talk of lord Dorchester to the Indians, and the other aggressions on the western frontier, which, however unjustifiable, were not altogether without provocation.

In the meanwhile, the French minister increased in his activity and boldness of enterprize, under the very eye of our government; he multiplied his complaints against the executive, and his caresses and professions upon the people, until at last, confident in his numbers and support, he set the President at defiance, and threatened an appeal to the people. At that awful crisis of delusion, Washington came forward, Moses like, and put himself in the gap between the pestilence and the people. He demanded the minister's recal, and he effected it. He arrested the hands of our citizens, who were armed to plunder in time of peace; he enforced the observation of the rules of justice and neutrality. When these things became known in England, they produced a revocation of the orders to

plunder our merchants. But the havoc and destruction had been dreadful; we were highly and justly incensed; the blood of both nations was up; it had scarcely cooled, and was easily roused to be ready for war. If the British had not recalled their orders of November, 1793, we undoubtedly should have gone to war. It would have been unavoidable, nay, absolutely necessary. But when the revocation of those orders was known here, our President considered, that our own conduct had not been perfectly regular; there was some cause of complaint against us, in the midst of all the just complaints we had against the British cruisers; there were also old differences, which had created great uneasiness between the two countries. In the recent causes of quarrel, we had been the first in suffering improper acts to be done by a foreign agent within our own territory, which we ought to have prevented as neutrals. Under all these circumstances, being already engaged in an Indian war, he resolved to try negotiation. An envoy extraordinary was accordingly sent.

How does all this apply to the present case? There had been old, unsettled differences with England; ours with Spain were settled by the treaty of 1795. There were horrible spoliations upon our trade by Britain, but we had permitted acts towards them, with which we were obliged to reproach ourselves. Spain has also spoiled our commerce, and to an immense extent, without provocation. For that, the case of England would say negotiate, and we have actually been negotiating. But had England blockaded your harbors, had she shut out half a million of your people from access to the ocean, had she closed up the Chesapeake or the Delaware, would there have been negotiation? No. You would, you must have had immediate war. Such an invasion of the sovereignty and independence of the country, would have left no hesitation in the mind of any man: but fortunately, as our affairs then stood, we were not

obliged to resort to hostilities. The man of high talents, who undertook to negotiate, succeeded in forming a treaty between the two countries. Such, however, were the passions of the times, that the negociator was grossly calumniated. The treaty was opposed by the formidable array of all the artillery of popular opinion, organized in town meetings, played off along the coast from Boston to Charleston, under the direction of the ablest engineer in this country. Public opinion was again shaken; but finally peace was preserved, the treaty went fairly into execution, and even the negociator was elected their governor, by the people of his own state, where he presided for a long time, with honor to himself and infinite advantage to the interests and peace of society: until at length he retired from public life, leaving an example, which will always be useful for imitation, and serve, at the same time, as a severe reproof to those who may materially depart from it.

Our differences and negotiations with England, then, furnish an interesting and serious view of the course we have taken in troublesome times, but certainly do not present any thing like the present case. For, although they actually held our western posts and built a new fort at the foot of the rapids of Miami, yet, we had never been in possession of those posts, we had not purchased the country from the Indians, we had no settlements near to it, no great portion of our citizens were obstructed or cut off from the free exercise of their rights, and there were mutual complaints, perhaps mutual injuries, between the parties, which seemed to require negotiation, as the only mode in which they could ever be terminated.

Next comes our difference with Spain. To this it may be answered briefly; that we made a treaty with that power; difficulties arose respecting the execution of that treaty; we had not then been in the possession or exercise of the rights claimed under the treaty. The Spaniards delayed and evaded the execution, in

a very unjustifiable manner. But the administration of that day did not rely upon negotiation alone; they ordered troops to the Ohio, and, had the Spaniards persisted in their refusal, those troops would have acted decisively, without any new application to the court of Spain. They saw the approaching storm; they entered upon the execution of the treaty, by running the line, and giving up the posts; and, if the war office be examined, gentlemen will find, that our troops were then so disposed as to fall down the river Mississippi, and act with effect, at any moment. It was well known to us, that Spain did not act in that business from the mere impulse of her own interests or wishes. She was then, and is still, under the irresistible influence of a powerful neighbor, with whom we, at that time, had serious differences; she was urged and pushed forward by France. For Spain, until she became thus dependent upon France, has ranked high for her good faith, and, in my opinion, deservedly higher than any other court in Europe. Slow to promise, she has always fulfilled her engagements with honor according to the spirit, without cavilling about the words of her treaties.

When we were aware of all these things, when there was no absolute refusal, but only delay and evasive excuses about the execution, not about the right, it would not have been wise to precipitate an absolute rupture between the two countries.

The proceedings with France are next adduced. These are fresh in the memory of every one, and need not be repeated. There was no blockade, no denial of egress to the ocean, no invasion, no territorial dismemberment, no attack upon the country, which required the immediate use of force. True, they captured your ships, they heaped indignities upon you; but they also alleged, that you had first broken the treaty of alliance. You negotiated: what else could you do? You had no navy. You could not go in quest of them, and they did not attempt to land on

your shores. When their aggressions rose to such a height as to be tolerated no longer, and defensive war was resolved on, what was the conduct of the minority then? Did they come forward and offer their support like the minority now? No, sir: they declared the administration was blameable; that the French had been provoked; that peace was still attainable by negotiation, and war at all events to be avoided. Look at the debates of that day, and you will discover, that many leading men contended that our own government was altogether in the wrong, and France in the right. Such was the impression abroad, that Talleyrand insultingly boasted of a party in our own country, and threatened us with the fate of Venice: and when the sacred right of embassy was trampled upon, as stated by the honorable gentleman from New York, still the cry at home was—negociate, negociate. Surely there is very little, if any resemblance between that case and this. However justifiable a war would have been then, we must have gone abroad to seek our enemy: now he has come to our doors, and stripped us of what is most precious and dear to us as an independent nation.

We are next told, under the third head of objections, that our national debt will be increased by war; that war will be the necessary consequence of the resolutions; that our object is war.

Sir, our object is not war, but the attainment of security for a right, without which our union, our political existence, cannot continue. In seeking this security, should war arise, it will be a less evil than insecure and delusive hopes of tranquillity. No doubt war will increase your public debt, but not more, nor so much as vain attempts to secure this right another way; and after failing you must have a war.

But your merchants will not obtain indemnities for spoliation. Their chance is but precarious now, and would be altogether as great in the way we propose to take.

Seaports will be blockaded and the Mississippi shut. The first is not probable, and as to the last, all the western people must be satisfied when they see their country maintaining and asserting their right. The very effort to maintain it will consume a great portion of the resources, and afford an extensive market to the aggrieved people, by supplying your military force. The river may as well be shut up completely as be in its present condition.

An honorable gentleman, (Mr. Wright,) has said, that we may have a place of deposit within our own territory and navigate the river from thence. The gentleman certainly has not well considered this subject. The nearest point upon our territory is three hundred miles from the sea. The river crooked, the current rapid, the anchorage bad. A favorable wind in one direction of the river would be adverse at the next bend. Ships could never ascend in any reasonable time, nor could they gain any point on our own territory, when they are forbidden to touch the shore, even to fasten a cable or towline. Without the privilege of the shore, the navigation would be impracticable.

The honorable gentleman from New York has advanced a most extraordinary position; that if our adversaries have time to prepare, we also have time to prepare: yet he resists the resolutions and proposes no effectual military preparations. While they are busy, we are to be idle: when they make the stroke, we are in our present defenceless state. Next year we shall be as weak and exposed as now, our commerce equally scattered over the ocean, our seaports as defenceless, our army and navy as weak, and they have then possession of the disputed spot, with an armament to annoy us and maintain their possession.

The honorable gentleman from Kentucky, (Mr. Breckenridge,) disclaims all apprehension of disgust, or disaffection among his constituents, or any of the western people. They were not always in this mild,

forbearing temper upon the subject of the Mississippi. It must be in the recollection of that gentleman, that M. Genet sent emissaries into Kentucky, distributed commissions there for enlisting men, and raising an army to take New Orleans, and open the navigation of the Mississippi to the western people. A very gallant and able officer accepted the commission of general on this expedition; and would undoubtedly have executed it, had not the recal of the French minister, and the failure of the promised resources defeated the enterprize. What reason was there to suppose they would be more forbearing now? That officer is still alive, and if he were to erect his standard, the consequences would not be very doubtful.

The honorable gentleman from Georgia, (Mr. Jackson,) agrees with us in every thing except as to the time of acting. He wishes to make an experiment at negociation, but admits the magnitude of the dispute, and that it involves the very existence of Georgia and the southern states. If the late events had happened upon St. Mary's, or if the Savannah had been shut up by the Spaniards, there would have been little doubt of the course that gentleman would have pursued. The news of the aggression and of the aggressors' graves would have reached the seat of government by the same mail. He would not have waited to inquire by whose orders they came there, or whether they could be negotiated out of Georgia. Although the honorable gentleman disagrees with us as to the time of acting, yet he has very honorably pledged himself for the ultimate result, should negociation fail: and while it is impossible to agree with what he has said respecting the ordinary force of the country driving the new occupants from their fastnesses and forts in the marshes of Florida or New Orleans, yet, sir, there can be no doubt that the spirit, which disdains to think of the hazard of such an enterprize, is of the utmost value to our country. For my own part, I have a pleasure in declaring my wish, that the gentleman now lived on the Mis-

issippi, and that he had authority from this government to act. I should have no doubt of the result, nor of the confidence and universal consent with which he would be supported. But he is certainly too much a soldier not to discern, that previous possession by a powerful enemy will require the labors and blood of a disciplined army, and the delay and skill requisite for the attack of a fortified country.

We come now to consider the resolutions offered as a substitute*. It is highly gratifying to find that the gentlemen are at last inclined to act; to do something like defending the rights of our country. Is there any new shape given to this business by the proposed substitute? We propose fifty thousand militia, they substitute eighty thousand. To do what? Will gentlemen tell us the difference? It is said ours are absolutely imperative; if so, alter them, and give an unqualified discretion. We will agree to it. My own opinion is, that they should be immediately acted upon. If the majority wish for a bare discretionary power, I assent to it. There is no difference, except that one set of

* The following resolutions had been proposed by Mr. Breckenridge, as a substitute for those brought forward by Mr. Ross.

Resolved, That the President of the United States, be, and he is hereby authorized, whenever he shall judge it expedient, to require of the executives of the several states to take effectual measures to organize, arm and equip, according to law, and hold in readiness to march at a moment's warning, 80,000 effective militia, officers included.

Resolved, That the President may, if he judge it expedient, authorize the executives of the several states to accept, as a part of the detachment aforesaid, any corps of volunteers, who shall continue in service for such time not exceeding months, and perform such services as shall be prescribed by law.

Resolved, That dollars be appropriated for paying and subsisting such part of the troops aforesaid, whose actual service may be wanted, and for defraying such other expenses as, during the recess of Congress, the President may deem necessary for the security of the territory of the United States.

Resolved, That dollars be appropriated for erecting, at such place or places on the western waters, as the President may judge most proper, one or more arsenals.

resolutions puts greater power into the hands of the President than the other. Are gentlemen on the other side afraid to trust the President? Do they think he will abuse this power? Will it hurt the negociation? Instead of hurting it, our minister ought to carry this act to Europe with him. He is not yet gone, and it may be sent with him; he would then have more means and more forcible arguments to urge in his negociation.

This whole subject was known at the meeting of Congress; yet no step taken till our resolutions were proposed. Now gentlemen are willing to do something. They seem willing to give means to a certain extent. Why not amend our resolutions, when their own are but a qualification of ours? We have but seven days to the end of this session. Why dispute about a substitute, when amendments may be made to meet gentlemen's wishes? They agree to go a certain length; then say so, and strike out the rest. Certainly we will go with you as far as you propose, for we have offered to go further.

But gentlemen say they have full confidence in the negociation. Be it so; I cannot doubt the assertion of the gentleman, although I draw a different conclusion from the same facts. But let me present this question in a new shape, not yet offered in this House. We are not deliberating about the right of deposit in New Orleans merely, nor about the island of New Orleans; we are told that we are to look for new and powerful neighbors in Louisiana. What right has Spain to give us these neighbors without consulting us? To change our present security into hazard and uncertainty? I do not believe that Spain has any right to do so. What are the limits of Louisiana? It extends three thousand miles upon your frontier. New Orleans is ceded with it. Then the province of Louisiana and New Orleans lie between the Floridas and the other Spanish dominions on this continent. It is not difficult to pronounce who will command and own the Floridas. They must

belong to the master of Louisiana and New Orleans. Then the owners possess the lock and key of the whole western country. There is no entrance or egress but by their leave. They have, not only three thousand miles on your frontier in the interior country, but they have the command of your outlet to the ocean, and seven hundred miles of seacoast embracing the finest harbors in North America. This makes them, in fact, masters of the western world. What will you give them for this enviable dominion? Not territory, for you have none to spare, and they want none. Not commercial privileges; they will not want them, for they will then have enough and to spare. What equivalent have you? What can you offer to men who know the value of such a country? What would this senate take for the surrender of such an establishment were it ours? Let every senator ask himself the question and declare, by what rule of estimation his answer would be dictated.

But I know it has been said, and will be said again, that the new French owners will confirm or permit our right of deposit and free navigation of the Mississippi; they will open a free port and give us all we desire. Yes, sir, this would be the unkindest cut of all. I fear much less the enmity of the present possessors, than such neighbors. We shall hold by their courtesy, not by the protection of our government. They will permit, but you cannot enforce. They will give us all the advantages we now have, and more: but will it be for nothing? Will they ask no return? Have they no ulterior views? During this insidious interval they will be driving rivet after rivet into the iron yoke which is to gall us and our children. We must go to market through a line of batteries manned by veterans; and return home with our money through a fortified camp. This privilege will be held at their will, and may be withheld whenever their Intendant forbids its further continuance.

No doubt my earnestness may have betrayed me

into expressions which were not intended. Every honorable gentleman will, therefore, consider me as addressing his reason and judgment merely, without meaning to give cause of offence. But I cannot conclude without addressing myself particularly to those senators who represent the western states. I entreat them to remember, that these resolutions are intended to vest a power which may or may not be used as events arise. If events should show, in the recess, that negotiation must fail, what is the President to do? He must call Congress. This will consume time, and the enemy gains immense advantages. Why not put a force at his disposal with which he can strike—with which he can have a pledge for your future well-being. When the Atlantic coast is willing, shall this security be lost by your votes? Are you sure that you will ever again find the same disposition? Can you recall, the decisive moment that may happen in a month after our adjournment? Certainly the country may be in such a state, that at the next session you will have no such offer as at the present moment. There may be a pressure which would forbid it. Heretofore you have distrusted the Atlantic states; and now, when they offer to pledge themselves, meet them and close with the proposal. If the resolutions are too strong, remodel them. If the means are not adequate, propose other and more effectual measures. But as you value the best interests of the western country, and the union with the Atlantic coast, seize the present occasion of securing it forever. For the present is only a question of how much power the executive shall have for the attainment of this great end; and no man, desirous of the end, ought to refuse the necessary means for attaining it. Your voice decides the direction this senate will take, and I devoutly wish it may be one we shall never repent.

SPEECH OF GOUVERNEUR MORRIS.

ON THE

RESOLUTIONS OF MR. ROSS, RELATIVE TO THE FREE NAVIGATION OF THE MISSISSIPPI:

**DELIVERED IN THE SENATE OF THE UNITED STATES,
FEBRUARY 25, 1803.***



MR. PRESIDENT,

I RISE with reluctance on the present occasion. The lateness of the hour forbids me to hope for your patient attention. The subject is of great importance, as it relates to other countries, and still greater to our own: yet we must decide on grounds uncertain, because they depend on circumstances not yet arrived. And when we attempt to penetrate into futurity, after exerting the utmost powers of reason, aided by all the lights, which experience could acquire, our clearest conceptions are involved in doubt. A thousand things may happen, which it is impossible to conjecture, and which will influence the course of events. The wise Governor of all things hath hidden the future from the ken of our feeble understanding. In committing ourselves, therefore, to the examination of what may hereafter arrive, we hazard reputation on contingencies we cannot command. And when events shall be past, we shall be judged by them, and not by the reasons which we may now advance.


There are many subjects which it is not easy to understand, but it is always easy to misrepresent, and when arguments cannot be controverted, it is not dif-

* See page 236.



licult to calumniate motives. That, which cannot be confuted, may be misstated. The purest intentions may be blackened by malice; and envy will ever foster the foulest imputations. This calumny is among the sore evils of our country. It began with our earliest success in '78, and has gone on, with accelerated velocity and increasing force, to the present hour. It is no longer to be checked, nor will it terminate but in that sweep of general destruction, to which it tends with a step as sure as time, and fatal as death. I know, that what I utter will be misunderstood, misrepresented, deformed and distorted; but we must do our duty. This, I believe, is the last scene of my public life; and it shall, like those which have preceded it, be performed with candor and truth. Yes, my noble friends, [addressing himself to the federal senators near him,] we shall soon part to meet no more. But, however separated, and wherever dispersed, we know, that we are united by just principle and true sentiment—a sentiment, my country, ever devoted to you, which will expire only with expiring life, and beat in the last pulsation of our hearts!

Mr. President. my object is peace. I could assign many reasons to show, that this declaration is sincere. But can it be necessary to give this senate any other assurance than my word? Notwithstanding the acerbity of temper which results from party strife, gentlemen will believe me on my word. I will not pretend, like my honorable colleague, (Mr. Clinton,) to describe to you, the waste, the ravages, and the horrors of war. I have not the same harmonious periods, nor the same musical tones; neither shall I boast of christian charity, nor attempt to display that ingenuous glow of benevolence, so decorous to the cheek of youth, which gave a vivid tint to every sentence he uttered; and was, if possible, as impressive even as his eloquence. But, though we possess not the same pomp of words, our hearts are not insensible to the woes of humanity. We can feel for the misery of



plundered towns, the conflagration of defenceless villages, and the devastation of cultured fields. Turning from these features of general distress, we can enter the abodes of private affliction, and behold the widow weeping, as she traces, in the pledges of connubial affection, the resemblance of him whom she has lost forever. We see the aged matron bending over the ashes of her son. He was her darling; for he was generous and brave; and therefore his spirit led him to the field in defence of his country. We can observe another oppressed with unutterable anguish; condemned to conceal her affection; forced to hide that passion, which is at once the torment and delight of life: she learns, that those eyes, which beamed with sentiment, are closed in death; and his lip, the ruby harbinger of joy, lies pale and cold, the miserable appendage of a mangled corse. Hard, hard indeed, must be that heart, which can be insensible to scenes like these; and bold the man, who dare present to the Almighty Father, a conscience crimsoned with the blood of his children!

Yes, sir, we wish for peace; but how is that blessing to be preserved? I shall repeat here a sentiment I have often had occasion to express. In my opinion, there is nothing worth fighting for, but national honor: for, in the national honor, is involved the national independence. I know, that a state may find itself in such unpropitious circumstances, that prudence may force a wise government to conceal the sense of indignity. But the insult should be engraven on tablets of brass, with a pencil of steel. And when that time and chance, which happen to all, shall bring forward the favorable moment, then let the avenging arm strike home. It is by avowing and maintaining this stern principle of honor, that peace can be preserved. But let it not be supposed, that any thing I say, has the slightest allusion to the injuries sustained from France, while suffering in the pangs of her revolution. As soon should I upbraid a sick man for what he might

have done in the paroxysms of disease. Nor is this a new sentiment: it was felt and avowed at the time when these wrongs were heaped upon us, and I appeal for the proof to the files of your secretary of state. The destinies of France were then in the hands of monsters. By the decree of heaven she was broken on the wheel, in the face of the world, to warn mankind of her folly and madness. But these scenes have passed away. On the throne of the Bourbons, is now seated the first of the Gallic Cæsars. At the head of that gallant nation is the great, the greatest man, of the present age. It becomes us well to consider his situation. The things, he has achieved, compel him to the achievement of things more great. In his vast career, we must soon become objects to command attention. We too, in our turn, must contend or submit. By submission we may indeed have peace, alike precarious and ignominious. But is this the peace which we ought to seek? Will this satisfy the just expectation of our country? No. Let us have peace, permanent, secure, and, if I may use the term, independent—peace, which depends not on the pity of others, but on our own force. Let us have the only peace worth having—a peace consistent with honor.

A gentleman near me, (Mr. Jackson,) has told us the anecdote of an old courtier, who said, that the interest of his nation, was the honor of his nation. I was surprised to hear that idea from that gentleman. But it was not his own. Such is that gentleman's high sense of his personal honor, that no interest would induce him to sacrifice it. He would not permit the proudest prince on earth to blot or soil it. Millions would not purchase his honor, and will he feel less for the honor of his country? No, he will defend it with his best blood. He will feel with me, that our national honor is the best security for our peace and our prosperity: that it involves at once our wealth and our power. And in this view of the subject, I must

contradict a sentiment which fell from my honorable colleague, (Mr. Clinton.) He tells us, that the principle of this country is peace and commerce. Sir, the avowal of such principle will leave us neither commerce nor peace. It invites others to prey on that commerce, which we will not protect, and share the wealth we dare not defend. But let it be known, that you stand ready to sacrifice the last man, and the last shilling in defence of your national honor, and those, who would have assailed, will beware of you.

Before I go into a minute consideration of this subject, I will notice what the gentlemen, opposed to me, have said on the law of nations. But I must observe, that, in a conjuncture like the present, there is more sound sense, and more sound policy in the firm and manly sentiments, which warm the hearts of my friends from Delaware, than in all the volumes upon all the shelves of the civilians. Let us, however, attend to the results of those logical deductions which have been made by writers on the law of nations. The honorable member from Kentucky, (Mr. Breckenridge,) has told us, that sovereigns ought to show a sincere desire of peace, and should not hastily take offence; because it may be, that the offensive act was the result of mistake. My honorable colleague has told us, that among the justifiable causes of war, are the deliberate invasions of right, and the necessity of maintaining the balance of power. He has told us further, that attempts should always be made to obtain redress by treaty, unless it be evident, that redress cannot be so obtained. The honorable member from Georgia, near me, informs us, that the thing we would obtain by war should be important, and the success probable, and that war should be avoided until it be inevitable. The honorable member from Maryland, (Mr. Wright,) has explained to us the case cited by the gentleman from Kentucky, as being that of a wrong, done by a private citizen. Under the weight of all this authority, and concurring with gentlemen in these their posi-

tions, I shall take leave to examine the great question we are called on to decide. I shall moreover fully and entirely agree with the honorable member near me in another point. He has, with the usual rapidity of his mind, seized the whole object. He tells us, and he tells us truly, that the island of Orleans and the two Floridas are essential to this country. They are joined, says he, by God, and sooner or later we must and will have them. In this clear and energetic statement I fully agree; and the greater part of what I have to say, will be but a commentary on the doctrines they have advanced, an elucidation of their positions, and the confirmation of that strong conclusion.

In order to bring this extensive subject within such bounds, as may enable us to take a distant view of its several parts, I shall consider, first, the existing state of things: secondly, the consequence to the United States of the possession of that country by France: thirdly, the consequence to other nations: fourthly, the importance of it to France herself: fifthly, its importance to the United States if possessed by them; and having thus examined the thing itself in its various relations, the way will be open to consider, sixthly, the effect of negotiation; and then, seventhly, the consequences to be expected from taking immediate possession.

Before I consider the existing state of things, let me notice what gentlemen have said in relation to it. The honorable member from Kentucky has told us, that indeed there is a right arrested, but whether by authority or not, is equivocal. He says the representative of Spain verily believes it to be an unauthorized act. My honorable colleague informs us, there has been a clashing between the Governor and the Intendant. He says, we are told by the Spanish minister it was unauthorized. Notwithstanding these assurances, however, my honorable colleague has, it seems, some doubts; but, nevertheless, he presumes innocence; for my colleague is charitable. The honora-

ble member from Maryland goes further; he tells us the minister of Spain says, the Intendant had no such authority; and the minister of France too, says there is no such authority. Sir, I have all possible respect for those gentlemen, and every proper confidence in what they may think proper to communicate. I believe the Spanish minister has the best imaginable disposition to preserve peace; being indeed the express purpose for which he was sent among us. I believe it to be an object near to his heart, and which has a strong hold upon his affections. I respect the warmth and benevolence of his feelings, but he must pardon me that I am deficient in courtly compliment; I am a republican, and cannot commit the interests of my country to the goodness of his heart.

What is the state of things? There has been a cession of the island of New Orleans and of Louisiana to France. Whether the Floridas have also been ceded is not yet certain. It has been said, as from authority, and I think it probable. Now, sir, let us note the time and the manner of this cession. It was at or immediately after the treaty of Luneville, at the first moment when France could take up a distant object of attention. But had Spain a right to make this cession without our consent? Gentlemen have taken it for granted that she had. But I deny the position. No nation has a right to give to another a dangerous neighbor without her consent. This is not like the case of private citizens, for there, when a man is injured he can resort to the tribunals for redress; and yet, even there, to dispose of property to one, who is a bad neighbor, is always considered as an act of unkindness. But as between nations, who can redress themselves only by war, such transfer is in itself an aggression. He who renders me insecure, he who hazards my peace, and exposes me to imminent danger, commits an act of hostility against me, and gives me the rights consequent on that act. Suppose Great Britain should give to Algiers one of the Bahamas, and contribute

thereby to establish a nest of pirates near your coasts, would you not consider it as an aggression? Suppose, during the late war, you had conveyed to France a tract of land along the river Hudson and the northern route by the lakes into Canada, would not Britain have considered and treated it as an act of direct hostility? It is among the first limitations to the exercise of the rights of property, that we must so use our own as not to injure another; and it is under the immediate sense of this restriction that nations are bound to act toward each other.

But it is not this transfer alone: there are circumstances, both in the time and in the manner of it, which deserve attention. A gentleman from Maryland, (Mr. Wright,) has told you, that all treaties ought to be published and proclaimed for the information of other nations. I ask, was this a public treaty? No. Was official notice of it given to the government of this country? Was it announced to the President of the United States, in the usual forms of civility between nations who duly respect each other? It was not. Let gentlemen contradict me if they can. They will say, perhaps, that it was the omission only of a vain and idle ceremony. Ignorance may, indeed, pretend, that such communication is an empty compliment, which, established without use, may be omitted without offence. But this is not so. If these be ceremonies, they are not vain, but of serious import and are founded on strong reason. He who means me well, acts without disguise. Had this transaction been intended fairly, it would have been told frankly. But it was secret because it was hostile. The first consul, in the moment of terminating his differences with you, sought the means of future influence and control. He found and secured a pivot for that immense lever, by which, with potent arm, he means to subvert your civil and political institutions. Thus, the beginning was made in deep hostility. Conceived in such principles, it presaged no good. Its bodings were evil, and evil have

been its fruits. We heard of it during the last session of Congress, but to this hour we have not heard of any formal and regular communication from those by whom it was made. Has the king of Spain—has the first consul of France, no means of making such communication to the President of the United States? Yes, sir, we have a minister in Spain; we have a minister in France. Nothing was easier, and yet nothing has been done. Our first magistrate has been treated with contempt; and through him our country has been insulted.

With that meek and peaceful spirit, now so strongly recommended, we submitted to this insult, and what followed? That which might have been expected; a violation of our treaty—an open and direct violation by a public officer of the Spanish government. This is not the case cited from one of the books. It is not a wrong done by a private citizen; which might, for that reason, be of doubtful nature. No; it is by a public officer—that officer, in whose particular department it was to cause the faithful observance of the treaty which he has violated. We are told, indeed, that there was a clashing of opinion between the Governor and the Intendant. But what have we to do with their domestic broils? The injury is done, we feel it. Let the fault be whose it may, the suffering is ours. But, say gentlemen, the Spanish minister has interfered to correct this irregular procedure. Sir, if the Intendant was amenable to the minister, why did he not inform him of the step he was about to take, that the President of the United States might seasonably have been apprized of his intention, and given the proper notice to our fellow-citizens? Why has he first learned this offensive act from those who suffer by it? Why is he thus held up to contempt and derision? If the Intendant is to be controlled by the minister, would he have taken a step so important without his advice? Common sense will say no. But, the bitter cup of humiliation was not yet full. Smarting under the lash of the Intendant, the

minister soothes you with kind assurances, and sends advice boats to announce your forbearance. But while they are on their way, new injury and new insult are added. The Intendant, as if determined to try the extent of your meekness, forbids to your citizens all communication with those who inhabit the shores of the Mississippi. Though they should be starving, the Spaniard is made criminal who should give them food. Fortunately, the waters of the river are potable, or else we should be precluded from the common benefits of nature, the common bounty of heaven. What then, I ask, is the amount of this savage conduct? Sir, it is war—open and direct war. And yet gentlemen recommend peace, and forbid us to take up the gauntlet of defiance. Will gentlemen sit here and shut their eyes to the state and condition of their country? I shall not reply to what has been said respecting depredations on commerce, but confine myself to objects, of which there can be no shadow of doubt. Here is a vast country given away, and not without danger to us. Has a nation a right to put these states in a dangerous situation? No, sir. And yet it has been done, not only without our consent previous to the grant, but without observing the common forms of civility after it was made. Is that wonderful man, who presides over the destinies of France, ignorant or unmindful of these forms? See what was done the other day. He directed his minister to communicate to the elector of Bavaria, his intended movements in Switzerland, and their object. He knew the elector had a right to expect that information, although the greater part of Swabia lies between his dominions and Switzerland. And this right is founded on the broad principles already mentioned.

As to the depredations on our commerce, they are numerous, and of great importance; but my honorable colleague has told us, our merchants are in a fair way of getting redress. I own, sir, I am surprised at this information, which is, I presume, a state secret, com-

municated from the executive department. My honorable colleague, who is the pattern of discretion, who was the monitor, and threatened to be the castigat^{or} of those, who, from treachery or weakness, might betray or divulge the secrets of the senate, cannot possibly allude to any thing on our files. He has, therefore, received this information from some other quarter, and I feel myself much obliged by his kind communication. But he must pardon me, sir, that until it comes forward in some body, shape, or condition, which I can grasp, I am compelled to withhold my faith.

Having thus examined the existent state of things, I proceed to consider the consequence to the United States, resulting from the possession of that country by France. To this effect, I shall suppose the Floridas to be included in her newly acquired dominion, and shall state what I conceive to be the conduct which she will pursue. She will, I presume, consider herself as not bound by our treaty with Spain. Declaring this to the inhabitants of the western country, and repelling the claim of right, she will, (as matter of favor,) give them unlimited freedom of trade to and from New Orleans. At that place, she will eventually raise a considerable duty on exports, to pay the expense of her garrisons, and of the civil administration. But, to compensate this, she will probably give an exclusive privilege of commerce to her colonies, and obtain from Spain and Holland similar privileges. Under these circumstances, let us examine the general and particular consequences to this, our country.

The general consequences are those which affect our commerce, our revenue, our defence, and what is of more importance even than these, our union. Your commerce will suffer, because you will no longer hold the means of supplying the West India islands, subject to your single control; and because all the export from New Orleans, being, of course, in French bottoms, your navigation will be proportionably diminished.

Your revenue will suffer as much as your commerce. The extensive boundary of more than two thousand miles, will be stocked with goods for the purpose of contraband trade. The inhabitants will naturally take their supplies in that way. You must, therefore, multiply your revenue officers and their assistants, and while your receipt diminishes, the expense of collection will be increased. As to what regards your defence, it is evident, that the decrease of your navigation and revenue, must narrow your means of defence. You cannot provide the same force, either by land or by sea: but the evil does not stop here. With this country in your possession, you have means of defence more ample, more important, more easy than any nation on earth. In a short time, all the West India islands, fed from your granaries, must depend on your will. And, in consequence, all the powers of Europe, who have colonies there, must court your friendship. Those rich sources of commercial importance will be, as it were, in your hands. They will be pledges for the amity of others, in seas and dominions far remote. It is a defence, which, though it costs you nothing, is superior to fleets and armies. But let the resources of America be divided, (which must happen when the French are masters of New Orleans,) and all this power and influence are gone. One half of your resources will be in their hands, and they will laugh at your feeble attempts with the other half. It is the interest of this country, that the possessions of European powers in the West Indies should be secured to them: and in this view of the subject, it is important that the island of St. Domingo should be subjected by France; it would, therefore, have been wise to have aided in that subjugation. There is, indeed, a special reason for it beyond the considerations of external policy. That event will give to your slaves the conviction, that it is impossible for them to become free. Men, in their unhappy condition, must be impelled by fear, and discouraged by despair. Yes—the impulsion of fear

must be strengthened by the hand of despair! Consider, moreover, your condition in the wars which are most likely to happen. These must be either with France or England. If with France, your interior is ruined; if with England, the commerce of the Atlantic states will be distressed, and that of the western country too, though not perhaps in so great a degree. Thus let the war be with whichever of those nations it may, one half of the United States must be peculiarly injured; and in all cases, it will be difficult for them to assist each other. The interior has no seamen for naval defence; the seaboard can send few, if any troops, beyond the mountains. This powerful influence of one nation on one great division of our country, and of another nation on the remainder, will tend to disunite us. The ridge of mountains will mark the line of distinct interests. The effect of those differing interests will be felt in your councils. It will find its way to this floor. This must be the case so long as man is man. Look, I pray, at those nations. The enmity of France and England can terminate only by the subjection of one to the dominion of the other. It must be by the complete exertion of force, and the utter impossibility of resistance. They are the Rome and Carthage of modern times. Their implacable spirit will stimulate them to attempt a division of this country, by sentiments of hatred, deadly as their own. These efforts will, I hope, be vain: but with such powerful engines to operate on the interest and the will, is there not danger to that union so essential to our prosperity? There will be a constant struggle in Congress as to the kind of public force, which ought to be maintained. The one part will desire an army, the other a navy. The unyielding spirit of party, will, perhaps, prevent the support of either; leaving the nation completely defenceless, and thereby increasing the power of those who may influence or command our destinies. For, let it be remembered, that a nation without public force, is not an independent nation. In a

greater or smaller degree, she will receive the law from others.

Having thus considered the effect of this cession upon the United States, in a general point of view, let us now examine it more particularly, as it regards the greater divisions of our country; the western, the southern, the middle, and the eastern states. I fear, sir, I shall detain you longer than I intended, certainly longer than the light of day will last, notwithstanding my effort to comprise what I have to say in the smallest compass. As to the western states, the effects will be remote, and immediate. Those more remote may be examined under the twofold aspect of peace and war. In peace, they will suffer the diminution of price for their produce. The advantage of supplying the French, Dutch and Spanish colonies, may, at first sight, lead to a different opinion: but when the port of New Orleans is shut to all but French ships, there will no longer be that competition which now exists, and which always results in the highest price, that commodities can bear. The French merchants have neither the large capital, nor have they the steady temper and persevering industry which foster commerce. Their invariable object in trade, is to acquire sudden wealth by large profit; and if that cannot be done, they abandon the pursuit for some new project. Certain of the market, and certain of the increasing supply, they will prescribe the price, both to those who cultivate, and to those who consume. Such will be the effect in peace. In a war with England, the attention of her fleets to cut off supplies from her enemies, must necessarily affect the price of produce in a still greater degree; and in a war with France, it will bear no price at all, until New Orleans shall be wrested from their grasp. Add to this the danger and the devastation from the troops of that country, aided by innumerable hosts of savages from the western wilds. Such being the evident effects to be produced in times not far remote, the present evil follows from the

anticipation of them. The price of land must be reduced, from the certainty that its produce will become less valuable. The flood of emigration to those fertile regions must cease to flow. The debts, incurred in the hope of advantageous sales, must remain unpaid. The distress of the debtor, must then recoil on his creditor, and, from the common relations of society, become general.

What will be the effect on the southern states? Georgia, Carolina and the Mississippi territory are exposed to invasion from the Floridas and New Orleans. There are circumstances in that portion of America which render the invasion easy, and the defence difficult. Pensacola, though the climate be warm, is among the healthiest spots on earth. Not only a large garrison, but an army may remain there without hazard. At Pensacola and St. Augustine, forces may be assembled to operate in that season of the year, when the morasses, which separate them from our southern frontier, no longer breathe pestilence. By what are those armies to be opposed? Will you call the militia from the north to assist their southern brethren? They are too remote. Will you, to secure their seasonable aid, bring them early to the fields, they are ordered to defend? They must perish. The climate, more fatal than the sword, will destroy them before they see their foe. The country, adjoining to our southern frontier, is now in possession of the most numerous tribes of savages, we are acquainted with. The access to it from New Orleans and the Floridas is easy and immediate. The toys and gewgaws, manufactured in France, will be scattered in abundance, to win their affections, and seduce them from their present connexion. The talents of the French to gain the good will of the savages, is well known; and the disposition of those uncultured men for war, is equally notorious. Here then is a powerful instrument of destruction, which may be used against you with ruinous effect. Besides, what is the population of the south-

ern states? Do you not tremble when you look at it? Have we not, within these few days, passed a law to prevent the importation of certain dangerous characters? What will hinder them from arriving in the Floridas, and what can guard the approach from thence to our southern frontier? These pernicious emissaries may stimulate, with a prospect of freedom, the miserable men who now toil without hope. They may excite them to imitate a fatal example, and to act over those scenes which fill our minds with horror. When the train shall be laid, when the conspiracy shall be ripe, when the armies of France shall have reached your frontier, the firing of the first musket will be a signal for general carnage and conflagration. If you will not see your danger now, the time must soon arrive when you shall feel it. The southern states being exposed to such imminent danger, their representatives may be made to know, that a vote, given in Congress, shall realize the worst apprehensions. You will then feel their danger even on this floor.

Such being the probable result, as to the southern, what will it be to the middle states? Their trade to the West India islands is gone, the moment that country is in possession of the French. England, to whose dominions alone they can have recourse for the vent of their produce and the purchase of their supplies, will confine that commerce to her own ships. I say, the moment the French are in possession of New Orleans, your West India trade is gone. I do not mean that this effect will be sudden as a flash of lightning, but it will be gone in a few years, which may be considered as a moment, when compared with national existence. You will then be dependent for that trade on the good will of England; and, as your navigation decreases, your dependence will be still greater, because you will rely on her navy for your protection. I again repeat, that when it shall be a question in your councils whether you will have a navy, the increasing weight of the western country will be thrown into the

scale of opposition. They will insist on an army for their protection. My honorable colleague has expressed his fears from a standing army. Sir, your present negligence will put you under the necessity of having such an army, and expose you to all the consequences to be apprehended from it. You may, indeed, remain united in a body as one nation, but with such contrariant interests and opinions, with sentiments and views so different, it will be a large and languishing body without a soul.

To the eastern states, when separately considered, this may appear a matter of less moment than to the other great divisions of our country. But they will perceive in it the loss of their navigation; they will see the theatre of their industrious exertions contracted; they will feel the loss of the productions of that western world in the mass of their commercial operations; and above all, they will feel the loss of an ample resource for their children. These western regions are peculiarly their heritage. It is the property of the fathers of America, which they hold in trust for their children. The exuberant population of the eastern states flows, in a steady stream, to the western world, and if that be rendered useless, or pass under the dominion of a foreign power, the fairest hope of posterity is destroyed. The time may come, and I fear it will come, when those, who cross the mountains, will cross the line of jurisdiction. Whether we consider, therefore, this object in its relations to our general policy, or examine its bearings on the greater divisions of our country, we find ample reason to agree with the gentleman near me, that New Orleans and the Floridas must not be separated from the United States.

Let us now consider the consequence of the cession, we complain of, to other nations; and this we may do generally, and then more especially as to those who have a direct and immediate interest in the transaction. In a general view, the first prominent feature

is the colossal power of France. Dangerous to Europe and to the world, what will be the effect of a great increase of that power? Look at Europe. One half of it is blotted from the list of empire. Austria, Russia, Prussia and Britain are the only powers remaining, except Sweden and Denmark, and they are paralyzed. Where is Italy, Switzerland, Flanders and all Germany west of the Rhine? Gone, swallowed up in the empire of the Gauls! Holland, Spain, Portugal, reduced to a state of submission and dependence! What is the situation of the powers that remain? Austria is cut off from Italy, the great object of her ambition for more than three centuries; long the rival of France, long balancing with the Bourbons the fate of Europe, she must now submit, and tacitly acknowledge to the world the superiority of her foe, and her own humiliation. Prussia, under the auspices of the great Frederick, was at the head of a Germanic league to balance the imperial power. Though united with Austria for a moment in the hollow league of the coalition, she has, like Austria, been actuated by a blind jealousy, and favoring the operations of France for the ruin of her rival, expected to share largely in the general spoil. In this fond hope she is disappointed; she now sees the power of France at her door. There is not a fortress from the Rhine to the Baltic, except Magdeburg, which the first consul may leave on his left. The fertile plains near Leipsic, contain the magazines for his armies, when he shall think proper to march to Berlin. Westphalia and lower Saxony are open on the side of Flanders and Holland. The Maine presents him a military road to the borders of Bohemia. By the Necker he approaches Ulm, and establishes himself on the Danube. These rivers enable him to take the vast resources of his wide domain to the point where he may wish to employ them. Menacing at pleasure his neighbors, he is himself secured by a line of fortresses along his whole frontier. Switzerland, which was the only feeble point of his de-

fence, and which separated his Gallic and Italian dominions, has lately been subjected. The voice, you now hear, warned the Swiss of their fate more than eight years ago. The idea seemed then extravagant; but realized, it appears but as a necessary incident. Russia is deprived of her influence in Germany, and thereby of a principal instrument by which her policy might operate on the great powers of the south. The Germanic body is, indeed, in the hand of the first consul. Three new electors along the Rhine are under the mouths of his cannon. They dare not speak—speak! None dare speak; they dare not think any thing inconsistent with his wishes. Even at their courtly feasts they sit like Damocles, destruction suspended over their heads by a single hair. Would you know the sentiment of England? Look at the debates, in the two houses of parliament; they speak their fears. Such being the general sentiment of Europe, can it be supposed that they will view, without anxiety, a new extension of that power and dominion, the object of their hatred and apprehension?

Will it be said, that there is a security to the freedom of mankind from the moderation with which this enormous power is to be exercised? Vain delusion! This power is not the result of accident. At the moment when France dethroned her sovereign, it was easy to foresee that a contest must ensue, in which her existence would be staked against the empire of the world. If not conquered by surrounding princes, (and the hope of such conquest, unless by the aid of her own citizens, was idle,) her numerous armies, acquiring discipline, must eventually conquer. She had the advantages of situation, and those which result from union, opposed to councils uncertain and selfish. It was easy also to foresee, that, in the same progress of events, some fortunate soldier would seat himself on the vacant throne: for the idea of a French republic was always a ridiculous chimera. Bonaparte has placed himself at the head of that nation by deeds

which cast a lustre on his name. In his splendid career, he must proceed. When he ceases to act, he will cease to reign. Whenever in any plan he fails, that moment he falls. He is condemned to magnificence. To him are forbidden the harmonies and the charities of social life. He commands a noble and gallant nation passionately fond of glory. That nation stimulates him to glorious enterprize, and because they are generous and brave, they ensure his success. Thus the same principle presents at once the object and the means. Impelled by imperious circumstances, he rules in Europe, and he will rule here also, unless by vigorous exertion you set a bound to his power.

Having thus cast a rapid glance on the general state of Europe, it remains to look particularly at the condition of England and Spain, so far as they may be affected by the cession of those provinces to France. England will see in it an increase of commerce and naval force for her rival. She will see imminent danger to her islands, and particularly to Jamaica. The climate of Pensacola has already been noticed. The position is of incalculable moment. During the sickly and hurricane season, fleets and armies may wait there in safety, till their enemy shall be enfeebled and unprotected. Where will the British fleets and armies be stationed with equal advantage? If they ask an asylum in your ports, you must refuse; for, should you listen to any such proposition, your kindness would be considered as a hostile aggression. The influence of France on the United States, (which has already been noticed,) will give double weight to her representations. And this very influence is among the effects which Britain must deprecate. I have not time to dwell on this subject, nor many others as fully as I ought. The condition of Spain is not less worthy of notice. No two nations on earth have more rooted hatred for each other than France and Spain. There are none more different in essential points of character. United, however, under sovereigns of the

same family, these antipathies were wearing away. But the fatal stroke which destroyed the French monarch has severed that band. Force has since produced not union, but submission. It is not in nature, that the Spanish king should foster kindly sentiments for him who has decked himself in the spoil of his house. The proud, the brave and the loyal Castilian groans under the yoke which galls him, but which he cannot break, and sickens at the recollection of his ancient glory. His deep resentments are known, and it is to prevent their effects that he has been compelled to make the cession of those provinces. France will then hold at her discretion the Spanish treasures, and the rich provinces of the new world. At the first symptom of hostile sentiment, she arrests the means of aggression. Thus the dependence of Spain is rendered absolute, and her chains are rivetted forever. Does Spain behold this state of things with calm indifference? No: she feels all the pangs of wounded pride, driven to the necessity of perpetuating its own humiliation.

A few words, after what has already been said, will suffice to show the importance of those provinces to France. This results from the influence on her rival, on Spain, and on the United States, by means of the position, the resources and the means of aggression which those provinces afford. Enough has been said of the position. The resources are great and increasing. Not only cotton and indigo will be furnished for her manufactures, but supplies and subsistence for her colonies and her troops. These resources, too, will be at the very point most important, both for defence and aggression. The same force will be ready to operate either against England, Spain, or America. Thus that force will be trippled in its moral effect, and influence alike the conduct of all, against whom it may be directed. To what has been said on the facility with which we may be assailed, I might add much, but it is unnecessary. It behoves us, how-

ever, to consider well the spirit of the French government, which, in all its changes, has never lost sight of this object. The French minister M. de la Luzerne, when Congress were deliberating on the *ultimata* for peace, obtained a resolution that our ministers should, as to our western boundary, treat under the dictation of France. Our ministers disdained the condition, and refused to obey. Their manly conduct obtained for you the countries, whose fate is now suspended on your deliberations. Never, no never, has France lost sight of Louisiana. Never for a moment has she been blind to its importance. Those, who, driven from her bosom into exile, wandered about among us, have gathered and communicated the fullest information. While they enjoyed your hospitality, they probed your weakness, and meditated the means of controlling your conduct. Whatever may be the fair appearances, rely on it, that every Frenchman bears with him every where, a French heart; and so he ought. I honor him for it. O, that Americans had always an American heart.

It remains to notice the advantage of this country to the United States, as it may relate to our power, our peace, our commerce, and above all, to our freedom. As to our power, something has already been said on the peaceful influence, which results from the dependence of colonies belonging to the great nations of Europe: add to this, that the product of those colonies must pass by our doors and be exposed to our cruisers. A further advantage is to be found in the ready means of invasion, (in concert with the troops of others,) if driven to the necessity of war. The possession of power will give us, not only security, but peace. Peace indeed can never be safe but by the aid of power. Our disposition is pacific. It is our interest to be at peace, and the form of our government, while it secures to us the enjoyment of as much liberty as is possible, renders it particularly imprudent to risk, in war, any change of the constitution. Grant us these

provinces, and we can dictate the conditions of our commerce with the islands. Possessed of them, it will be doubly lucrative, and without them, wholly uncertain. There is another stream of profitable trade which will then flow in our channels. The risk and difficulty which Spain experiences in bringing home her treasures, when she is at war, will naturally suggest the advantage of remitting them through this country. The produce of the Mexican mines may then be shipped directly to Asia. It will be paid for to Spain by bills on the commercial nations, and thus furnish to her the easy means of obtaining the supplies she may stand in need of. The bullion will be so much the more valuable, as the danger and expense of transportation are diminished. This, therefore, would have a beneficial result upon the whole commercial world. It would more especially emancipate Spain from her present thralldom. It would give a happy change to all her interior administration, and increase both her absolute and relative force. Let me say here, that it is our interest to preserve the authority of Spain over her American territory. We have enough of our own. We can have no wish to extend our dominions. We want men, not land. We are, therefore, the natural, and the safe guardians of Spain. On us she may rely with perfect confidence. We can derive from that commerce, which it is her interest to permit, all the advantage we ought to ask. But great as are the benefits which will result from the possession of the Floridas and New Orleans, great as is their tendency to advance our power, secure our peace, and extend our commerce, there is a consideration, in comparison with which, commerce, peace and power, are of but slight avail. These provinces will fortify the defences of our freedom. My honorable colleague has stated to you his apprehensions of standing armies. And yet, sir, if we be not possessed of this territory, standing armies become necessary. Without an imposing military force, the inhabitants of

the western country will be in such immediate danger, that they must league with a neighbor who will have every thing to offer, and from whom they will have every thing to fear. This will lead to the worst of all wars, to civil war. And when that shall happen, liberty will soon be lost. The army, which has defeated one half the nation, will easily lend itself to enslave the other. Such is the history, and such will ever be the fate of man. In this view, then, above all others, is that possession most precious. When it is in our hands, we need no standing army. We can turn our whole attention to naval defence, which gives complete security, both at home and abroad. When we have twenty ships of the line at sea, (and there is no good reason why we should not have them,) we shall be respected by all Europe. The sense of security resulting from such force, must give a new spring to industry and increase the stock of national wealth. The expense, compared with the benefit, is moderate, nay, trifling. And let me here say one word as to national expense. Sir, whatever sums are necessary to secure the national independence, must be paid. They will not amount to one half of what it must cost us to be subdued. If we will not pay to be defended, we must pay for being conquered. There is no medium, and but the single alternative. In the proper expenditure for defence, therefore, is true economy; and every pitiful saving, inconsistent with that object, is the worst, the most profligate profusion.

Having now considered, in its various relations, the importance of these provinces, the way is open to estimate our chance of obtaining them by negociation. Let me ask, on what ground you mean to treat? Do you expect to persuade? Do you hope to intimidate? If to persuade, what are your means of persuasion? Every gentleman admits the importance of this country. Think you the first consul, whose capacious mind embraces the globe, is alone ignorant of its value? Is he a child, whom you may win by a rattle

to comply with your wishes? Will you, like a nurse, sing to him a lullaby? If you have no hope from fondling attentions and soothing sounds, what have you to offer in exchange? Have you any thing to give which he will take? He wants power: you have no power. He wants dominion: you have no dominion; at least none that you can grant. He wants influence in Europe. And have you any influence in Europe? What, in the name of heaven, are the means by which you would render this negotiation successful? Is it by some secret spell? Have you any magic power? Will you draw a circle, and conjure up devils to assist you? Or do you rely on the charms of those beautiful girls with whom, the gentleman near me says, the French grenadiers are to incorporate? If so, why do you not send an embassy of women? Gentlemen talk of the principles of our government, as if they could obtain for us the desired boon. But what will these principles avail? When you inquire as to the force of France, Austria, or Russia, do you ask whether they have a *habeas corpus* act, or a trial by jury? Do you estimate their power, discuss their interior police? No. The question is, how many battalions have they? What train of artillery can they bring into the field? How many ships can they send to sea? These are the important circumstances which command respect and facilitate negotiation. Can you display these powerful motives? Alas! Alas! To all these questions you answer by one poor word—confidence—confidence—yea, verily, we have confidence. We have faith and hope: aye, and we have charity too. Well—go to market with these christian virtues, and what will you get for them? Just nothing. Yet in the face of reason and experience, you have confidence: but in whom? Why, in our worthy President. But he cannot make the treaty alone. There must be two parties to a bargain. I ask if you have confidence also in the first consul? But whither, in the name of heaven, does this confidence lead, and to

what does it tend? The time is precious. We waste, and we have already wasted moments which will never return. You have already tried negociation. I say you have tried it, because I know you have a minister in France, and I am sure the first magistrate of our country cannot have been so negligent, as not to pay attention to a subject which is confessedly of such magnitude. You have, then, negociated: and with what success? Why, instead of defeating the cession, you have closed the river. Instead of obtaining any advantage by a new treaty, you have lost the benefit of an old one. Such are the results of your negociation in Europe. In this country, you have negociated to get back the privilege you are robbed of: and what follows? A prohibition to touch their shores. Instead of restoring the rights of treaty, they cut you off from the rights of humanity. Such is your splendid success from negociation; and yet gentlemen tell us, we must continue to negotiate. The honorable member from Kentucky says, that great lengths are gone in inquiring into, and rectifying the irregular procedure. He tells us, a minister is just appointed, and it would, therefore, be inconsistent to fight just now: that moreover it would degrade the President's authority, and defeat his measures. The gentleman from Georgia says, we have no right to go to war till there shall be a refusal on the part of Spain; and my honorable colleague assures us, that if our wrongs are redressed by negociation, we can have no complaint. As to the lengths which are gone, it is for those gentlemen to appreciate their value, who know what they are. I profess my ignorance, and judging by effects, must withhold my confidence. If we must wait for a pointed refusal, before we do ourselves right, I venture to predict a delay fatal to the peace of this country. But, sir, what is it we are to ask, the refusal of which will justify war? Is it, (as my honorable colleague supposes,) a mere restitution of a privilege wrongfully taken away? Sir, I answer in the words of the reso-

lutions moved by my friend: "It does not consist with the dignity of this country, to hold a right so important by a tenure so uncertain." But the honorable member from Maryland has told us, that we need not cross the Atlantic to seek for precedents, that we have enough on our own archives; and he has had the goodness to mention our humble petitions presented to the king of Great Britain in 1775. We sent, says he, petition after petition. I am sure that honorable member has no wish that a minister should be sent to bear our humble petition to the footstool of the first consul's throne. But, sir, whether we treat or pray, it will end as it did in 1775, by war, unless we are determined to give up that independence which we then fought to establish. Let us consider, a moment, the natural course of this negociation. It is the interest of France to foster in us a hope from treaty, until she has put herself in a condition to frustrate all other hope. There can be no question, therefore, that she has avoided, and will avoid a direct refusal. And as long as we are content to accept of smooth speeches, general assurances, vague assertions, and loose evasions, we shall have no want of that court currency. But why, it may be said, has she not already taken possession? Because her original plans have been greatly deranged. St. Domingo presented obstacles unexpected, and that enterprize must not be abandoned; for though the island may not in itself be of much consequence, though it must be ruined before it can be conquered, yet conquered it must be, for the world must continue to believe, that the first consul cannot fail in what he has undertaken. Much of his power rests on that opinion, and it must, therefore, be maintained. But there are other incidents besides those of St. Domingo, which have had the same tendency. There followed, on the general peace, a serious discussion of the German indemnities; then the affairs of Italy; lately of Switzerland; and during the whole momentous period, it was doubtful how far England would

bear a continued invasion of the liberties of Europe. And it was evident, that should the war recommence with England, the force sent to this country would be totally lost. It was important, therefore, to gain time; and for that very reason, we should have insisted on an immediate decision. Such, then, is the state of this treaty so fondly desired—a treaty, by which we are to ask much and offer nothing—a negotiation, in which we have no means to persuade. Have we any to intimidate? Where is your public force? You have none; and seem resolved not to have or use any. My honorable colleague tells us, that war will increase our debt one hundred millions, and that our people are not fond of taxes. He says we are trying a new experiment to pay our debts in a given period, which war would derange. It would injure, moreover, our pacific character, and might draw down the jealousy of all nations who have colonies. He believes that three fourths of our people are opposed to war; but yet he thinks that nine months hence we shall be in a better condition. What is the effect of this language? Is it not to convince the adverse party that he has nothing to fear from a refusal? As to this experiment for the payment of our debts, whether it has the merit of novelty I shall not inquire; but I am bold to assert, that the merit, be it what it may, is due to one of my worthy friends who formerly administered our finances. The same plan, also, has been adopted by another great statesman, (Mr. Pitt,) who has for many years past provided regularly a fund to liquidate, in a given period, each debt which his nation has incurred. But does England trust her safety to the protection of her sinking fund? No. She has fifty thousand seamen employed, and a hundred thousand soldiers. These form the shield of her defence. A gentleman near me has told us, that in case of war, our mercantile capital is exposed in every part of the world. To this I answer, first, that the same objection will apply with equal weight upon any and every occasion. But further, I say, the argu-

ment is directly and completely against him. How does it stand? He admits, that if negotiation fails, he will draw the sword. He goes further, and says he will throw away the scabbard. Now, sir, it is clear that if we operate at once, notice may be given to our merchants. Advices may be sent in season to every sea. And here let me say, that it is a duty of the government to apprize both our insurers and shippers of their dangerous situation. It is unwise as well as unjust to lull them into a fatal security. But suppose the treaty shall fail, and remember that the success or failure depends on Bonaparte, he will weigh the present declarations and act accordingly. He will commence a war on your commerce long before you know that war exists. I say, therefore, the argument is directly against the gentleman who used it. And here let me say one word on the comparative merits of the resolutions on your table. Those moved by my honorable friend, give the President command not only of the militia, but of the naval and military force. They place money at his disposal, and what is most important, they put it in his power to use these efficient means. The resolutions moved as an amendment, authorize, indeed, a call for a greater number of militia, but when called they can do nothing but consume their rations. There is no power to bring them into action, and of course the expense is useless, even for the purpose of influence.

Having endeavored to show, that we have no hope from treaty, it only remains to consider the natural effect of taking an immediate possession. Against this measure it has been said, that war, instead of giving relief, will absolutely shut up the Mississippi. That a single seventy-four in the mouth of that river would stop it effectually. I believe, sir, it would not only stop, but turn it; for a seventy-four would run aground and obstruct the channel. But what is the amount of these observations? The gentlemen all agree. that if they cannot obtain their ob-

ject without war, they will fight for it. The mischief they deprecate must therefore arrive, unless there be a well grounded hope from treaty; and the only difference is, that they are willing to take a longer term of sufferance, because they have a stronger expectation of relief without the exertion of force. I have no such expectation. I shall, therefore, proceed to consider what will follow, if we take possession without a previous alliance with Britain, or with such an alliance. I have heard it urged in conversation, that such alliance should first be made, and, therefore, I think it proper to take up the subject in debate. I cannot, however, but remark on the different language now held, from that which we heard a year ago. Then it was the fashion to say, we had nothing to do with other nations. And when a man of plain sense observed, that this disposition was of little avail, because other nations would have something to do with us; and when the particular danger we now see was pointed out; oh! then, to be sure, there was nothing to apprehend from our dear sister republic! I censure no man for adopting other and wiser principles. I have no question, but that as gentlemen proceed in the business of government, they will see the folly of many other fanciful notions, but I must entreat them not to fly from one extreme to the other. I hesitate not to give my opinion, that we ought to take possession without consulting Great Britain. And having done so, let us declare to France, that we mean to live with her in perfect amity. Let us offer every assistance in our power to conquer and preserve St. Domingo. Let us show her, that we have done an act of mere defence. Let us prove our pacific disposition by declaring, that we are under the tie of no obligation to her rival. To Spain let us hold a similar language. Let us point out her present danger and demonstrate the utility of our possession. To both, let us offer to relinquish our claims for spoliations on our commerce and pay our own merchants. We can well

afford to purchase with that price, a price paid to ourselves. Finally, if our representations do not produce the desired effect, let us tell them that we will ally ourselves to England, and aid in the conquest of all their American dominions. Sir, this language will be listened to. Rely on it, that, under such circumstances, neither France nor Spain dare send hither a single regiment or a single ship. The existence of the British naval force will alone produce all the effect you could ask from its operation. But what are we to hope from a delay until an alliance shall be made? What will be the stipulations of the treaty of alliance? These may be more or less onerous or pernicious. Certainly the British minister will not hazard the fate of his nation without the hope of some correspondent advantage. One stipulation is certain. We must agree to continue the war until a peace can be obtained by common consent: and this is precisely the stipulation which we ought not to make, if it can be avoided; because we shall then be no longer masters of our exterior relations. To this it may be objected, that we cannot expect aid from Britain without a previous treaty. I ask, what reliance you have for aid with treaty? The answer is, that it will be her interest. And, sir, it is her interest to give that aid without treaty.

I have now gone through this tedious discussion. I have trespassed on your patience more than I wished, although, from the lateness of the hour, much has been omitted of what I ought to have said. I have endeavored to show, that, under the existing circumstances, we are now actually at war, and have no choice but manly resistance or vile submission; that the possession of this country by France is dangerous to other nations, but fatal to us; that it forms a natural and necessary part of our empire; that, to use the strong language of the gentleman near me, it is joined to us by the hand of the Almighty, and that we have no hope of obtaining it by treaty. If, indeed, there be any such hope, it must be by adopting the resolutions offer-

ed by my honorable friend. Sir, I wish for peace; I wish the negociation may succeed, and therefore I strongly urge you to adopt these resolutions. But though you should adopt them, they alone will not insure success. I have no hesitation in saying, that you ought to have taken possession of New Orleans and the Floridas, the instant your treaty was violated. You ought to do it now. Your rights are invaded, confidence in negociation is vain: there is, therefore, no alternative but force. You are exposed to imminent present danger: you have the prospect of great future advantage: you are justified by the clearest principles of right: you are urged by the strongest motives of policy: you are commanded by every sentiment of national dignity. Look at the conduct of America in her infant years. When there was no actual invasion of right, but only a claim to invade, she resisted the claim; she spurned the insult. Did we then hesitate? Did we then wait for foreign alliance? No—animated with the spirit, warmed with the soul of freedom, we threw our oaths of allegiance in the face of our sovereign, and committed our fortunes and our fate to the God of battles. We then were subjects. We had not then attained to the dignity of an independent republic. We then had no rank among the nations of the earth. But we had the spirit which deserved that elevated station. And now that we have gained it, shall we fall from our honor?

Sir, I repeat to you that I wish for peace: real, lasting, honorable peace. To obtain and secure this blessing, let us, by a bold and decisive conduct, convince the powers of Europe that we are determined to defend our rights; that we will not submit to insult; that we will not bear degradation. This is the conduct which becomes a generous people. This conduct will command the respect of the world. Nay, sir, it may rouse all Europe to a proper sense of their situation. They see, that the balance of power, on which their liberties depend, is, if not destroyed, in extreme danger. They

know that the dominion of France has been extended by the sword over millions who groan in the servitude of their new masters. These unwilling subjects are ripe for revolt. The empire of the Gauls is not, like that of Rome, secured by political institutions. It may yet be broken. But whatever may be the conduct of others, let us act as becomes ourselves. I cannot believe, with my honorable colleague, that three fourths of America are opposed to vigorous measures. I cannot believe that they will meanly refuse to pay the sums needful to vindicate their honor and support their independence. Sir, this is a libel on the people of America. They will disdain submission to the proudest sovereign on earth. They have not lost the spirit of '76. But, sir, if they are so base as to barter their rights for gold, if they are so vile that they will not defend their honor, they are unworthy of the rank they enjoy, and it is no matter how soon they are parcelled out among better masters.

My honorable friend from Pennsylvania, in opening this debate, pledged himself and his friends to support the executive government if they would adopt a manly conduct. I have no hesitation to renew that pledge. Act as becomes America, and all America will be united in your support. What is our conduct? Do we endeavor to fetter and trammel the executive authority? Do we oppose obstacles? Do we raise difficulties? No. We are willing to commit into the hands of the chief magistrate the treasure, the power and the energies of the country. We ask for ourselves nothing. We expect nothing. All we ask is for our country. And although we do not believe in the success of treaty, yet the resolutions we move, and the language we hold, are calculated to promote it.

I have now performed, to the best of my power, the great duty which I owed to my country. I have given that advice which in my soul I believe to be the best. But I have little hope that it will be adopted. I fear that, by feeble councils, we shall be exposed to a long

and bloody war. This fear is, perhaps, ill founded, and if so I shall thank God that I was mistaken. I know that, in the order of his Providence, the wisest ends frequently result from the most foolish measures. It is our duty to submit ourselves to his high dispensations. I know that war, with all its misery, is not wholly without advantage. It calls forth the energies of character, it favors the manly virtues, it gives elevation to sentiment, it produces national union, generates patriotic love, and infuses a just sense of national honor. If, then, we are doomed to war, let us meet it as we ought; and when the hour of trial comes, let it find us a band of brothers.

Sir, I have done, and I pray to Almighty God that this day's debate may eventuate in the prosperity, the freedom, the peace, the power and the glory of our country.

SPEECH OF URIAH TRACY.

ON

A RESOLUTION PROPOSING AN AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, RELATIVE TO THE MODE OF ELECTING THE PRESIDENT AND VICE PRESIDENT :*

BELIVERED IN THE SENATE OF THE UNITED STATES,
DECEMBER 2, 1803.



MR. PRESIDENT,

I MOVED an adjournment, because I thought a more full and fair discussion was due to this important question, than could be had after this late hour.

* The resolution was in the following words : *Resolved*, By the senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both houses concurring, that in lieu of the third paragraph of the first section of the second article of the constitution of the United States, the following be proposed as an amendment to the constitution of the United States, which, when ratified by three fourths of the legislatures of the several states, shall be valid to all intents and purposes, as part of the said constitution, to wit :

The electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves ; they shall name in their ballots, the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the

The merits have never, until now, been before us, for although considerable time has been consumed in debate, it has chiefly been directed to the subordinate amendments, and not to the main resolution. But since the senate have refused to adjourn, I will now offer some observations on the merits, in doing which, I will study brevity, as much as the importance of the subject will permit.

I shall attempt to prove, sir, that the resolution, before us, contains principles which have a manifest tendency to deprive the small states of an important right, secured to them by a solemn and constitutional compact, and to vest an overwhelming power in the great states. And, further, I shall attempt to show, that in many other points the resolution is objectionable, and for a variety of causes, ought not to be adopted.

As I shall be obliged, in delineating the main features of this resolution, to mention the great states in the union as objects of jealousy, I wish it to be understood, that no special stigma is intended. "Man is man," was the maxim expressed, in an early part of this debate, by the gentleman from South Carolina, (Mr. Butler,) and, in application to the subject of government, the maxim is worthy to be written in letters

whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states must be necessary to a choice.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the Vice President ; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

of gold. Yes, sir, "man is man," and the melancholy truth, that he is always imperfect and frequently wicked, induces us to fear his power, and guard against his rapacity, by the establishment and preservation of laws, and well regulated constitutions of government. Man, when connected with very many of his fellow-men, in a great state, derives power from the circumstance of this numerous combination; and from every circumstance, which clothes him with additional power, he will generally derive some additional force to his passions.

Having premised this, I shall not deem it requisite to make any apology, when I attempt to excite the attention, the vigilance, and even the jealousy of the small, in reference to the conduct of the great states. The caution is meant to apply against the imperfections and passions of man, generally, and not against any state, or description of men, particularly.

[Mr. Tracy here made some observations explanatory of his meaning, when he used the words small and great, as applicable to states.]

It will be recollected, that, in the various turns which this debate has taken, gentlemen have repeatedly said, that the constitution was formed for the people, that the good of the whole was its object, that nothing was discernible in it like a contest of states, nothing like jealousy of small states against the great; and although such distinctions and jealousies might have existed under the first confederation; yet they could have no existence under the last. And one gentleman, (Mr. Smith, of Maryland,) has said, that he has been a member of this government ten years, and has heard nothing of great and small states, as in the least affecting the operations of government, or the feelings of those who administer it. Propriety, therefore, requires, that we attentively examine the constitution itself, not only to obtain correct ideas upon these observations, so repeatedly urged; but to place, in the proper light, the operations and effects of the resolution in debate.

If we attend to the constitution, we shall immediately find evident marks of concession and compromise ; and that the parties to these concessions were the great and small states. And the members of the convention, who formed the instrument, have, in private information and public communications, united in the declaration, that the constitution was the result of concession and compromise between the great and small states. In this examination of the constitution, it will, be impossible to keep out of view our political relations under the first confederation. We primarily united upon the footing of complete state equality ; each state had one, and no state had more than one vote in the federal council or Congress. With such a confederation we successfully waged war, and became an independent nation. When we were relieved from the pressure of war, that confederation, both in structure and power, was found inadequate to the purposes for which it was established. Under these circumstances, the states, by their convention, entered into a new agreement upon principles better adapted to promote their mutual security and happiness. But this last agreement or constitution, under which we are now united, was manifestly carved out of the first confederation. The small states adhered tenaciously to the principles of state equality ; and gave up only a part of this federative principle, complete state equality, and that, with evident caution and reluctance. To this federative principle they were attached by habit ; and their attachment was sanctioned and corroborated by the example of most, if not all the ancient and the modern confederacies. And when the great states claimed a weight in the councils of the nation proportionate to their numbers and wealth, the novelty of the claim, as well as its obvious tendency to reduce the sovereignty of the small states, must have produced serious obstacles to its admission. Hence it is, that we find in the constitution but one entire departure from the federal principle. The House of Representatives is established

upon the popular principle and given to numbers and wealth, or to the great states, which, in this view of the subject, are synonymous. It was thought by the convention, that a consolidation of the states into one simple republic, would be improper: and the local feelings and jealousies of all, but more especially of the small states, rendered a consolidation impracticable. The senate, who have the power of a legislative check upon the House of Representatives, and many other extensive and important powers, is preserved as an entire federative feature of government, as it was enjoyed, by the small states, under the first confederacy.

In the article, which obliges the electors of President to vote for one person not an inhabitant of the same state with themselves, is discovered state jealousy. In the majorities, required for many purposes by the constitution, although there were other motives for the regulations, yet the jealousy of the small states is clearly discernible. Indeed, sir, if we peruse the constitution with attention, we shall find the small states are perpetually guarding the federative principle, that is, state equality: and this, in every part of it, except in the choice of the House of Representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of states in the senate. This is guarding against almost an impossibility; because the senators of small states must be criminally remiss in their attendance, and the legislatures extremely off their guard, if they permit such alterations, which aim at their own existence. But lest some accident, some unaccountable blindness or perfidy should put in jeopardy the federative principle in the senate, they totally and forever prohibit all attempts at such a measure.

In the choice of President, the mutual caution and concession of the great and small states, is, if possible, more conspicuous than in any other part of the constitution. He is to be chosen by electors appointed as the state legislatures shall direct. not according to

numbers entirely, but adding two electors in each state as representatives of state sovereignty. Thus Delaware obtains three votes for President, whereas she could have but one in right of numbers. Yet, mixed as this mode of choice is with both popular and federative principles, we see the small states watching its motions and circumscribing it to one attempt only; and on failure of an electoral choice, they instantly seize upon the right of a federal election, and select from the candidates a President, by states, and not by numbers. In confirmation of my assertion, that this part of the constitution was peculiarly the effect of compromise between the great and small states, permit me to quote an authority, which will certainly have great weight, not only in the senate, but through the union, I mean that of the present secretary of state, (Mr. Madison,) who was a leading member of the federal convention who formed, and of the Virginia convention who adopted the constitution. In the debates of the Virginia convention, volume 3, page 77, he says, (speaking of the mode of electing the President,) "As to the eventual voting by states it has my approbation. The lesser states and some larger states will be generally pleased by that mode. The deputies from the small states argued, and there is some force in their reasoning, that when the people voted, the large states evidently had the advantage over the rest, and without varying the mode, the interests of the little states might be neglected or sacrificed. Here is a compromise. For, in the eventual election, the small states will have the advantage."

After this view of the constitution, let us inquire, what is the direct object of the proposed alteration in the choice of President? To render more practicable and certain the choice by electors: and for this reason; that the people at large, or, in other words, that the great states, ought to have more weight and influence in the choice; that it should be brought nearer to the popular, and carried further from the federa-

tive principle. This claim, we find was made at the formation of the constitution. The great states naturally wished for a popular choice of first magistrate: this mode was sanctioned by the example of many of the states, in the choice of governor. The small states claimed a choice on the federative principle, by the legislatures, and to vote by states: analogies and examples were not wanting to sanction this mode of election. A consideration of the weight and influence of a President of this union, must have multiplied the difficulties of agreeing upon the mode of choice. But, as I have before said, by mutual concession, they agreed upon the present mode, combining both principles and dividing between the two parties, thus mutually jealous, as they could, this important privilege of electing a chief magistrate. This mode then became established, and the right of the small states to elect upon the federative principle, or by states, in case of contingency of electoral failure of choice, cannot with reason and fairness be taken from them, without their consent, and on a full understanding of its operation; since it was meant to be secured to them by the constitution, and was one of the terms, upon which they became members of the present confederacy; and for which privilege they gave an equivalent to the great states, in sacrificing so much of the federative principle, or state equality.

The constitution is nicely balanced, with the federative and popular principles; the senate are the guardians of the former, and the House of Representatives of the latter; and any attempts to destroy this balance, under whatever specious names or pretences they may be presented, should be watched with a jealous eye. Perhaps a fair definition of the constitutional power of amending is, that you may, upon experiment, so modify the constitution, in its practice and operation, as to give it, upon its own principles, a more complete effect. But this is an attack upon a fundamental principle established after a long deliberation,

and by mutual concession—a principle of essential importance to the instrument itself, and an attempt to arrest from the small states, a vested right, and, by it, to increase the power and influence of the large states. I shall not pretend, sir, that the parties to this constitutional compact, cannot alter its original, essential principles; and that such alterations may not be effected under the name of amendment; but, let a proposal of that kind come forward in its own proper and undisguised shape; let it be fairly stated to Congress, to the state legislatures, to the people at large, that the intention is to change an important federative feature in the constitution, which change, in itself and all its consequences, will tend to a consolidation of this union into a simple republic; let it be fairly stated, that the small states have too much agency in the important article of electing a chief magistrate, and that the great states claim the choice, and we shall then have a fair decision. If the senators of the small states, and if their state legislatures will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan, adopted by our constitution, for choosing a President. The electors are to nominate two persons, of whom they cannot know which will be President; this circumstance not only induces them to select both from the best men, but gives a direct advantage into the hands of the small states, even in the electoral choice. For they can always select from the two candidates, set up by the electors of large states, by throwing their votes upon their favorite, and of course giving him a majority; or, if the electors of the large states should, to prevent this effect, scatter their votes for one candidate, then the electors of the small states would have it in their power to elect a Vice President. So that, in any event, the small states will have a considerable agency in the election. But if the discriminating or designating principle is carried,

as contained in this resolution, the whole, or nearly the whole right and agency of the small states in the electoral choice of chief magistrate, is destroyed, and their chance of obtaining a federative choice by states, if not destroyed, is very much diminished. For this identical purpose is the principle of electoral discrimination and designation, introduced into the resolution before you; for the same purpose is the number of candidates reduced from five to three, from whom the House of Representatives may elect, in case of electoral failure of choice; that is, to destroy, or diminish the agency of the small states, in the choice of President. For what purpose else, are we perpetually told, and from all parts of the senate, that the public will is opposed by the present mode, and the public will cannot be gratified without the introduction of the discriminating principle. By the public will thus mentioned, the gentlemen mean the will of a popular majority, or the will of the great states, which, in this case, I repeat it, are the same. How is it possible for the gentleman to increase the chances of gratifying this description of the public will without decreasing the agency of the small states?

The whole power of election is now vested in the two parties—numbers and states, or great and small states: and it is demonstration itself, that if you increase the power of the one, in just such proportion you diminish that of the other. Do the gentlemen suppose, that the public will, when constitutionally expressed, by a majority of states, in pursuance of the federative principle of our government, is of less validity, or less binding upon the community at large, than the public will expressed by a popular majority? The framers of your constitution, the people who adopted it, meant, that the public will, in the choice of a President, should be expressed by electors, if they could agree, and if not, that the public will should be expressed by a majority of the states, acting in their federative capacity, and that, in both cases, the ex-

pression of the public will should be equally binding. Is it pretended that the public will can never, properly or constitutionally, be expressed, but by a majority of numbers, of the people or of the House of Representatives? This may be a pleasing doctrine enough to great states; but it is certainly incorrect. Our constitution has given the expression of the public will, in a variety of instances, other than that of the choice of President, into very different hands from either the House of Representatives or the people at large. The President and senate, and in many cases the President alone, can express the public will, in appointments of high trust and responsibility, and it cannot be forgotten that the President sometimes expresses the public will, by removals. Treaties, highly important expressions of the public will, are made by the President and senate; and they are the supreme law of the land. In the several states, many great offices are filled, and even the chief magistracy by various modes of election. The public will is sometimes expressed by pluralities, instead of majorities; sometimes by both branches of the legislatures, and sometimes by one; and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good, or even pardonable motive, then, can it be urged, that the present mode of electing our President, has a tendency to counteract the public will? Do gentlemen intend to destroy every federal feature in this constitution? And is this resolution a precursor to a complete consolidation of the union, and to the establishment of a simple republic? Or will it suffice to break down every federative feature, which secures to one portion of the union, to the small states, their rights? I am not without my fears, Mr. President, that this is but the beginning of evils, and that this constitution, the bulwark of the feeble mem-

bers of the confederacy; the protection of the weak against the strong; the security of the small against the great; the last, best hope of man, with a view to stability in a free government, and to the preservation of liberty in a republic; is destined to undergo changes, and suffer innovations, till there be no residue worth preserving, and nothing left, which ambition will condescend to overturn.

Time will not permit me to dwell any longer on this part of my argument. But I am deceived, sir, if the view I have now taken of the constitution, does not show most obviously, that in its formation there was a struggle between the great and small states, with respect to many of its principles and leading features: and that the participation in the election of a chief magistrate, clearly secured to them by the constitution, will receive a deadly blow by the adoption of the proposed amendment.

It can be no contradiction to my ideas upon the subject, if we have heard nothing of state conflicts, in the administration of this government. The great states have never, till now, directly attempted to violate the sanctuary of the small, and despoil them of their rights; had this been earlier attempted, we should have heard and seen the same jealousy awakened, and the same opposition exerted. The conflict could happen in no other way, than by an attack from the large states. We had neither the desire nor ability to injure them, and we now ask no favors, but their permission to enjoy, in peace and safety, the rights conceded to us by themselves, and secured by a solemn constitutional compact.

We have been told by a gentleman from Virginia, that it would be impolitic in us to rouse the great states. I shall, at present, take no further notice of this warning, given to us, no doubt, in the full exercise of benevolence, but to request the small states to preserve it in constant recollection. It may induce them not hastily to part with constitutional security. There

are some other points of light, in which I wish to place the subject before us. The constitution is of recent date: it was formed by the mutual concessions of conflicting parties, and balanced with a view to the securing of all. Experience alone can test its utility, and time and practice discover its faults. It is a sound position, that you should never attempt an alteration in an instrument so complicated, and calculated to serve so many various and opposite interests, without being able, by the test of experiment, to discern clearly the necessity of alteration, and without a moral certainty, that the change shall not only remove an existing evil, but that it shall not produce any itself. The article in the constitution, establishing the mode of electing a chief magistrate, and which is now proposed to be altered, was undoubtedly one of the most difficult parts of the whole, at its formation. I am convinced, sir, that the public mind is not sufficiently impressed with the difficulty of adopting, not only an unexceptionable, but even a tolerable and practicable mode of electing a chief magistrate, possessing such important and extensive powers as are constitutionally vested in the President of the United States. An attempt to detail the number and magnitude of his powers, to this senate, would be impertinent: but it must and will be acknowledged by all, that the President is vested with powers vastly extensive and important, and that he will bring with him into the government more or less of state politics and state prejudices; and these facts, to which may be added the probability that he will be taken from a large state, must have increased the difficulties of the convention, in fixing on a mode of choice. How often have contests, wars and bloodshed, the destruction of confederacies, of liberty, and of vast portions of the human race, arisen from the election of chief magistrates? When we consider that the powers, vested in the President of this union, are sufficiently important to excite the avarice and ambition of the human heart, its two

most active principles, to gain possession of the office; when we consider the difference of sentiment, habit and interest in this country; state pride and state jealousy, which could never be laid asleep; the difficulties of fixing upon a proper mode of election, must be, also, infinitely multiplied. And yet this article is now selected for alteration. All the amendments, which have been hitherto adopted, went to some general explanation, upon very general principles, not changing but rather expounding the constitution. This, as I have before said, is taking up the most difficult and most important article in the constitution, both in relation to rights and principles. But it is said, that experience has shown us the necessity of an alteration in this article; that an evil has been found in practice to grow out of the constitutional provision, which calls imperiously for remedy.

[Here Mr. Tracy referred to the late presidential election, and drew an inference, that the circumstances connected with it, afforded no ground of argument in favor of the proposed amendment.]

I have said, that the article fixing the mode of electing a chief magistrate was, from its nature, attended with many difficulties. A more strict inquiry into the constitutional mode, and a comparison of it, in some other and more particular points, with the proposed alteration, will be useful in forming an opinion of their relative merits.

As the constitution stands, each elector is to write the names of two persons on a piece of paper, called a ballot. Either of the two persons, thus voted for, may be President, and the elector cannot know which: this affords the most powerful inducement to vote for two, both of whom are qualified for the very important office. For it is not only uncertain upon whom the choice will fall at first, but the one remaining will certainly be President, upon any contingency which shall remove or incapacitate the first. The convention seem to have selected a mode of proceeding the most

simple, the least liable to accident, and the best calculated to insure the main object; that is, that both should be really worthy of the trust. If one candidate wishes to make interest with the electors, as each must vote for two, it will be impossible for bribery or intrigue to succeed; for without corrupting the whole, or certainly many more than half, he may be defeated by the other candidate on a ballot. This is, perhaps, the most effectual bar to intrigue, that was ever contrived; for, unless all, or a great proportion of the electors are corrupted, (an extreme case of depravity not probable in any country,) intrigue can have no assurance of success. The danger and difficulty, which must always attend such an important election, as that of chief magistrate of the United States, was meant to be avoided, by diminishing the chances of its frequent recurrence. So two persons are placed in condition to act as President in succession, to prevent both the evils, of vacancy, and a recurrence of choice more frequently than once in four years. And it seems merely incidental to this second person, to be called vice president, and neither the first nor second description of electors can have any right to vote for him as such; indeed, he can have no existence till the first character is designated and then seems to be discovered, not elected. The senate, in case of an equal number of votes for two or more remaining persons, after the President is elected, are vested with authority to choose a vice president, for as such he is to preside over this body, and this body, therefore, seems to be the only constitutional organ to designate him. Both the other descriptions of electors have nothing to do with such a character or office; but are confined to act with a single reference to the character and office of President; and are trusted with no power to give any opinion of the character or qualifications of a vice president. And it is remarkable, that there are no appropriate qualifications made necessary by the consti-

tution, for a vice president; but every qualification has reference to the President.

There is another important feature in this part of the constitution. It was known by the convention, that in this country, in common with all others, where there is freedom of opinion and of speech, there would be parties. They likewise knew, that the intolerance of the major, or ruling sect and political party, was frequently exercised upon the minor party, and that the rights of the minority ought to be protected to them. As well, then, to secure the rights of the minority, as to check the intolerance of the majority, they placed the majority in jeopardy, if they should attempt at grasping all the benefits of a President and vice president within themselves, to the total exclusion of the minority. This very case which happened at the last election was contemplated, in which the majority attempted totally to exclude the minority from any participation. The language of the constitution to such majorities is, "take care that you aim not at too much, for if you do, it is put into the power of the minority to check you, and by a judicious disposition of their few votes, determine the choice of President." To avoid this event, the majority will probably be cautious in the exercise of power; and thus the rights, the proper weight and influence of a minority are secured against the conduct of the majority, which is certainly liable to be intolerant and oppressive. In this respect, the spirit of the constitution is, political moderation. And it is clear to my mind, that the experience of the last election has taught a lesson to all majorities, which will in future completely secure them from again incurring a similar risk. I recollect well, that it was thought probable, when the electoral votes were given, that Mr. Burr would have a vote or two, in some of the eastern states. If he had received but one, he would have been, by an electoral choice, the constitutional President. If the majority in future have

powers of recollection, they will undoubtedly avoid the evil, if it is one, which happened at the last election, with such unfailing certainty, that there will be no need of the remedy proposed by the amendment. But the majority say, if their votes are so scattered for one candidate as to avoid this danger, that another will be incurred; and that is, the minority will elect a vice president. The language of the constitution to them, is again, "that this was meant as a security for the minority against the majority." But the majority exclaim against both these provisions, as very unreasonable indeed: "what," say they, "are minorities to govern majorities?" The answer of the constitution is, "no, but their due weight and influence shall be secured to them, and the danger of your intolerance guarded against." For the security of small states and minorities, there is, in the constitution a mixture of the federative with the popular principles. And as it is well known, that, when popular majorities alone prevail, and exercise power uncontrolled by constitutional checks, the minorities, who generally possess their proportion of integrity and virtue, are overwhelmed, and liberty itself, by the same means, destroyed; so it is in kindness to both parties, to the country and to humanity, that these wholesome checks are constitutionally provided. Had the majority, or the great states been willing, fairly to have submitted to the constitutional checks in the last election, no evil could have happened. And it is remarkable that the constitution completely protects them, as long as they obey its precepts, in the creation of which they had an agency, and to which they have solemnly agreed. To prove that I am correct in these ideas, I not only refer to the constitution, but to the secretary of state, (Mr. Madison.) In the Virginia debates, volume 1, page 96, he says, "But on a candid examination of history, we shall find, that turbulence, violence and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in repub-

lics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the resources of that diversity of sentiments which pervades its inhabitants, we shall find great danger that the same causes may terminate here, in the same fatal effects, which they produced in those republics. This danger ought to be wisely guarded against: perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system, which is now exclaimed against as the parent of oppression."

Mr. President, it has often been said, by the discerning and judicious of this and other countries, that our constitution, for its brevity, its comprehensiveness, its perspicuity, and the political skill contained in it, was the best state paper extant. I believe all this, and even more is a tribute justly due to its merits; and I am persuaded that the article which fixes a mode for the choice of a chief magistrate, stands most prominent among its excellencies. Let us now, sir, examine and compare the merits of the amendment, with a special reference to this last view we have taken of the constitutional provision.

The amendment authorizes the electors to vote for a President, and for a vice president, by specific designation. Is ambition in your country? Here is a direct and inviting object for its operation. Is the integrity of your electors assailable? You place it here in the most encouraging attitude for an assault. A fear of detection, and a sense of shame, upon the exposure of an improper action, has been, perhaps, a better security against political errors or crimes, than all the moral virtues united, when the temptation has been attended with an impossibility of detection. An in-

trigue with an elector, can be carried on without much danger of detection ; but when your election is carried into the House of Representatives, besides the ordinary weight of character in favor of the members of that House, a detection of an intrigue with a candidate is almost certain. It will be recollected, that, at the last election, two or three members held the choice perfectly in their own hands. If I mistake not, three gentlemen, that is, a member from New Jersey, a member from Vermont, and one from, either Maryland, Delaware or Tennessee, could have given a President to the United States. The particular gentlemen mentioned, were above suspicion of bribery ; but in addition to this circumstance, if they had, in the contest, gone over, from improper motives, or under the influence of bribery, a detection was certain.

This will remain forever, the criterion, as it respects the relative danger of intrigue and bribery, in the two modes of choice. And the amendment is avowedly intended to secure a choice by electors, and to prevent a resort to the House ; because, says the gentleman from Virginia, (Mr. Taylor,) “ if you permit the election to go into the House, there are small states, and minorities, and all the evils of a diet election : ” meaning, that corruption must be the consequence. But he says, “ let there be a divided election, by the electors, meeting by states separately, and you lessen the tendency to corruption.” This may look plausible in theory, but I think practice will show its fallacy. It may be better for the electors to meet by states, than for all to be together, but this can never prove that they are less liable to corruption than the House of Representatives ; which is the only point in question.

The manner of electing the vice president, as proposed by the amendment, not only invites ambition to an unchecked operation ; but exposes us to the selection of a less important, and more unfit person, than the constitutional provision. In addition to his importance in the government, arising from his incidental succession to the chief magistracy, the vice president

is, *ex officio*, president of the senate, and gives a direct influence to the state from which he is chosen, of a third vote in this body, in all cases of equal division, which are usually the cases of the most importance. Besides, his influence as presiding officer is, perhaps, more than equal to the right of a vote. It becomes, therefore, peculiarly important to the small states, and to minorities, whose security rests in this body, not only, that their influence in the election of vice president should not be diminished; but that no measure be adopted, which may tend to bestow the office upon an unworthy character. By the proposed amendment, this character must necessarily become a sort of make-weight, and stepping stone for the presidency. As in recruiting for an army, a man, active and of a particular cast of character, but not very proper for a commander in chief, is employed to obtain recruits, and upon condition that he obtains a given number, is to be rewarded with a serjeant's warrant; so in this case, the man who can procure a given number of votes for President, will be encouraged to hope for the vice presidency; and where will such characters be sought after? In Delaware or Rhode Island? No, sir, but in the great states; there the recruiting talents will be put in operation, because the number of recruits, or votes, will be sufficient to test his active and recruiting merits. And thus the office of vice president will be sent to market, with hardly a possible chance to meet an honest purchaser.

I have already remarked upon the alteration made by the senate, in the resolution passed by the House of Representatives, changing the number five to three. But one addition made this morning, deserves attention; I mean that which authorizes the vice president to administer the government, in case neither the first nor the second constitutional electors effect a choice of President.*

* An amendment to the resolution had been proposed, which provided, that in case the House of Representatives should not, with-

This is a new principle and its operation is more uncertain, than that of any other part of the proposed amendment. Viewing it in one point of light, it may be thought to confer a new power upon the senate; that of giving a President to the union. And it is said, that this part will recompense the small states, who have the ascendancy in the senate, for the injury inflicted by the other parts of the amendment. If it be true, that the last part restores all which the former parts have taken away from us, it is inconceivable, why any man can wish to pass a resolution, the parts of which thus mutually destroy each other. It is possible, that by the force of intrigue and faction, the electors may be induced to scatter their votes for both President and vice president, in such manner, as to present several candidates to the House for President and two or more to the senate for vice president. In which case, the senate might immediately choose or select a vice president. In this state of things, there is an opportunity afforded for an intrigue, of a very extensive and alarming nature. The senate, I mean a majority of them, might wish that the man whom they had elected vice president, should administer the government, and if the House could be prevented from agreeing, their wishes would be gratified. The facility of preventing over that of producing a choice, is very obvious.

A bold address may be made to any member of the House, without wounding his pride, or offending his morality, to adhere to his candidate, and not change his vote so as to effect a choice. He can be told, that there is no danger of leaving the United States without a President, as there is one already chosen to his hand, by the senate; and this person may be more the object of his wishes, than any of the other candidates, his favorite excepted. In this process, the senate

in days, effect the choice of President, in the manner prescribed, and a vice president shall be duly elected, the vice president should discharge the duties of President.

may give a President to the United States. But if the probability of such a process and such an event is increased by the amendment of this morning, it cannot certainly greatly recommend it. For myself, I wish for no alteration in the constitution, not even if its operations were directly in favor of the small states, more especially if such a favor is to be derived through a sort of double conspiracy of intrigue; in the first place, to operate on the electors, and then on the House of Representatives. It seems to me, that the small states had better be contented to enjoy the rights now secured to them by the constitution, which they can honestly do, rather than submit to a deprivation of their rights, for the sake of dishonestly obtaining a restoration of them. We may charitably and safely conclude, that the majority do not intend, by this part of the amendment, to expose the country to such a scene of iniquity. And the uncertainty of its operations, alone, is, in my mind, a sufficient ground for rejection. However the operation of this part of the amendment may appear in theory as to other points, it seems to me, that in one point all must agree, and that is, when the House of Representatives know that the United States will be left without an executive magistrate, in case they do not agree; this awful responsibility will speak in a voice too loud for the hardness of party entirely to disregard. And may not I suggest, without giving offence, that the operation of this very responsibility has been proved, at least in some degree, in the proceedings of the last presidential election?

If this last mentioned security be worth preserving, it follows of course, that the part of the amendment alluded to, ought not to pass.

There is another view of the constitution, which has a reference to the general subject before us: and that is, the caution exhibited with respect to the introduction of amendments. In an instrument so important, and containing many features new, if not to the world, at

least to ourselves, although we might approve of its principles; yet experience might discover errors as to the mode devised for carrying those principles into effect. Hence it was the part of wisdom and caution to provide for such alterations in practice as would give the fairest operation to principles, without incurring the confusion and agitation incidental to a general convention. But lest the daring and restive spirit of innovation should injure or destroy, under the specious name of amendment, that same wisdom and caution have provided salutary checks.

“Two thirds of both Houses of the Congress shall deem it necessary,” to propose amendments; and three fourths of the state legislatures shall ratify such amendments, before they acquire validity. I speak now, sir, of the mode which has always been, and probably will be put in practice to obtain amendments. The other constitutional mode is equally guarded as to numbers, but, as it has no relation to the subject now in debate, may be laid aside. “Two thirds of both Houses,” must, I think, on every fair principle of construction, mean two thirds of all the members. The number of senators is thirty-four; two thirds being twenty-three. And as there is no representation from New Jersey, the number of representatives is one hundred and thirty-six; two thirds being ninety-one.

My impressions are, sir, that this amendment cannot constitutionally be proposed to the state legislatures, unless it is agreed to, in the two Houses, by those numbers, twenty-three and ninety-one, respectively. This is a constitutional point, which, I am told, has never been agitated, but is certainly worthy of attention. If the construction should prevail, that two thirds of the members present at any time, might propose amendments, the consequence is, that twelve senators, being two thirds of a quorum, and forty-eight representatives, being a similar two thirds, might propose any and the most important amendments. I am aware, sir, that it may be said, such propositions are

not final, they may yet be ratified or rejected by the state legislatures. But the spirit of the constitution seems to require two thirds of the nation, acting by its proper organs, to propose amendments; and that, in so interesting a subject as a constitutional alteration, a less number should have no authority.

The letter of the constitution will certainly justify this idea of its spirit. When two thirds of the senate are requisite to consent and advise to a treaty, the words are "two thirds of the senators present." To convict on impeachment, "two thirds of the members present." Yeas and nays are to be entered on the journal, "at the desire of one fifth of those present." In the two first cases, it is requisite to act immediately, whether two thirds of the whole are present or not; then we see the expressions are clear, "two thirds" refers to the numbers present. Why so? Because, without these expressions, the reference would have been understood to be the whole number of members. In the last case, why add the word "present" to the one fifth? Because, without that word, one fifth of the whole would have been its meaning. In all other cases, when two thirds are required, the spirit of the constitution certainly is, and the words seem to carry the meaning, "two thirds" of the whole numbers. It is said, "that a majority of each House shall constitute a quorum to do business." House, in this case, must mean all the members. Two thirds of both Houses must, on the same principles, mean two thirds of all the members of both. There is, I acknowledge, some obscurity, in the constitutional use of the word House, when either of the two branches of Congress is described by it; but if the intention and sense, as well as words are attended to, I am forcibly led to believe, that two thirds of all the members of both Houses are required to sanction propositions for amendments, and that this construction is most consistent with the wisdom and political skill of the convention. The construction for which I contend, is analogous to the caution manifest in other parts of

the constitution. It was well known to the convention, that amendments, if recommended or proposed by Congress, would have an imposing influence with the state legislatures; and that, in no possible instance, could more evil arise from indigested measures, than in the case of amendments, owing to the impossibility of clearly foreseeing their operation and effects on the general constitutional system. It was made requisite, therefore, to wait for the uninfluenced movement of two thirds of the popular and federative representatives of the nation. Whatever may be our opinion on the point now discussed, the state legislatures have a constitutional right to judge of it for themselves, and to determine whether a proposition for an amendment is presented to them, with the sanction required, and if, in their opinions, the requisite numbers have not agreed to the proposition, they will guard the constitution, by refusing to ratify such amendment. My honorable friend from New Hampshire, (Mr. Plumer,) has done such ample justice to this part of the subject, as to place it out of the reach of my assistance and beyond the need of any.

I am convinced, Mr. President, that the amendment now under consideration could not, in the senate, obtain a constitutional majority, of two thirds, or even a simple majority, were it not for the influence of instructions. Some gentlemen have ingeniously said, that until they gave this amendment the present particular examination, they had not contemplated the extent of its probable effects, and although they entertained doubts, yet they were induced by the instructions given them, to make the proposition to the legislatures, and let them decide for themselves.

Whatever may or can be said in favor of instructions generally, cannot be applicable to this case. For the purpose of obtaining amendments to the constitution, Congress can only propose, and the state legislatures ratify. The duties are appropriate and distinct, and the uninfluenced, independent act of both.

requisite. The legislatures cannot ratify, till a proposal is made. This subject can be elucidated and enforced by familiar examples. The House of Representatives alone, can originate a bill for raising revenue, but it cannot become a law without a concurrence of the senate. Would not the advice and instruction of the senate to the House, intimating our desire that they would originate and send to us for concurrence, a revenue bill, be thought improper, indelicate and even unconstitutional? The President and senate can appoint certain officers, but they have distinct and appropriate agencies in the appointment. The President can nominate, but cannot appoint without the advice and consent of the senate.

But the senate cannot nominate, nor could their advice to the President, to make a nomination, be either binding or proper. The character of the several independent branches of our government, forming constitutional checks upon each other, cannot be exemplified more fully, than in the mode of producing amendments. And an interference of one independent body, upon the appropriate and distinct duties of another, can, in no instance, have a more prejudicial effect. Can it be thought, then, either proper, or constitutional, for the state legislatures to assume the power of instructing to propose to them a measure, when the power of proposing is not only not given to them, but given exclusively to Congress? As well and with as much propriety might Congress make a law, attempting to bind the state legislatures to ratify; as the legislatures by instructions, bind Congress to propose. In either case, the check, which, for obviously wise purposes, was introduced into the constitution, is totally destroyed. And we have not as much security against improper amendments, as we should have, if the power were exclusively vested in the state legislatures, and for this obvious reason, that in this mode of operation the responsibility, for the adoption of an improper amendment, is divided and destroyed. Is the

sentiment correct, sir, that we shall be justifiable in sending forth this proposition to be considered by the state legislatures, if we believe it ought not to be ratified? What would be thought of the senate, if they should pass a bill, and send it to the House of Representatives for concurrence, the provisions of which they disliked entirely, and wished not to be established? And can any sound distinction be made between such a measure and the one now before us? In either case, the single act of the other body would be final; and in either case, the people at large would be safer to have but one body in existence, to legislate, or make amendments; for all our agency in both cases would only tend to deceive and mislead, and, in addition, to diminish, if not destroy, as has just been observed, the responsibility of the other body.

It has been said, sir, that the House of Representatives have twice given a sanction to this measure, and that their conduct, in this particular, adds weight to it; I wish to treat that honorable body with the highest respect; but I must deviate from the truth, were I to acknowledge that their conduct upon this amendment, has a tendency to convince me that they have a full understanding of the subject. Twice have they sent us a resolution, similar in its leading feature to that on your table, and made no provision that the person to be vice president should be qualified for the highly responsible office, either in age, or citizenship. And for aught that they had guarded against, we might have had a man in the chief magistracy, from Morocco, a foreigner, who had not been in the country a month.

Mr. President, it was suggested, in a former part of the debate, by a gentleman from South Carolina, (Mr. Butler,) that the great states, or ruling party of the day, had brought forward this amendment, for the purpose of preventing the choice of a federal vice president at the next election. And we are now put beyond the power of doubt, that this is, at least, one motive, by the observations of several of the majority, but es-

pecially by those of the gentleman from Virginia. He informs us, and I appreciate his frankness, that if the friends of this measure do not seize the present opportunity to pass it, the opportunity will never recur. He tells us plainly, that a minor faction ought to be discouraged, that all hopes or prospect of rising into consequence, much more of rising into office, should be crushed, and that this amendment is to produce a part of these beneficial effects; which amendment he compares to the bill which was introduced into the British parliament, to exclude a popish successor to the crown, commonly called the exclusion bill. Have the minority then, no right left but the right to be trampled upon by the majority? This is identically the conduct, which is mentioned in the quotation which I have had the honor to make from the secretary of state; to which I ask leave to recur. "The majority, by trampling on the rights of the minority, have produced factions and commotions, which, in republics, have more frequently, than any other cause, produced despotism."

What avails it then, that this country has triumphed over the invasion and violence of one oppressor, if they must now be victims to the violence of thousands? Political death is denounced now; what denunciation will follow? It would be a useless affectation in us, to pretend to close our eyes upon either the cause or consequences of this measure.

The spirit of party has risen so high, at the present day, that it dares to attempt, what in milder times would be beyond the reach of calculation. To this overwhelming torrent, every consideration must give way.

The gentleman is perfectly correct, in supposing that now is the only time to pass this resolution; there is a tide in the affairs of party most emphatically, and unless its height is taken, its acme improved, the shallows soon appear, and the present demon of party gives place to a successor. A hope is undoubtedly now in-

dulged, that one great and dominant passion, will, like Aaron's rod, swallow up every other, and that the favorable moment can now be seized to crush the small states, and to obtain their own agency in the transaction. And when we recur to the history of former confederacies, and find the small states arrayed in conflict against each other, to fight, to suffer, and to die for the transient gratification of the great states; have we not some reason to fear the success of this measure?

In the senate is the security of the small states; their feeble voice in the House of Representatives is lost in the potent magic of numbers and wealth. Never until now, has the force of the small states, which was provided by the constitution, and lodged in this federative body, as a weapon of self-defence, been able to bear upon this question. And will the small states, instead of defending their own interest, their existence, sacrifice them to a gust of momentary passion—to the short lived gratification of party prejudice?

This resolution, if circumstances shall unequivocally demand it, can pass at the next or any future session of Congress. But once passed, and its passage will operate like the grave; the sacrificed rights of the small states will be gone forever. Is it possible, sir, that any small state can submit to be a satellite in the state system, and revolve in a secondary orbit around a great state—act in humble devotion to her will till her purposes are gratified, and then content herself to be thrown aside like a cast garment, an object of her own unceasing regret, and fit only for the hand of scorn to point its slow and moving finger at? Can the members of the senate, who represent the small states, quietly cross their hands and request the great states to bind them fast and to draw the ligature?

I am aware, sir, that I shall be accused of an attempt to excite the jealousy of the small states. Mr. President, I represent a small state; I feel the danger, and claim the constitutional right to sound the alarm. From the same altar on which the small states shall

be immolated, will rise the smoke of sacrificed liberty : and despotism must be the dreadful successor.

It is the cause of my country and of humanity which I plead. And when one vast overwhelming passion is in exercise, full well I know, sir, that no warning voice, no excitement but jealousy, has been found sufficiently active and energetic in its operation to dissolve the wizard spell, and force mankind to listen to argument.

Jealousy, hateful in private life, has perhaps done more in the preservation of political rights than all the virtues united.

I have made the stand, sir, in the senate, which I thought the importance of the subject demanded. If I fail here, there is hope of success with the state legislatures. If nothing can withstand the torrent there, I shall experience the satisfaction which is derived from a consciousness of having raised my feeble voice in defence of that constitution, which is not only the security of the small states, but the palladium of my country's rights ; and shall console myself with the reflection, that I have done my duty.

SPEECH OF JOHN TAYLOR,

ON

A RESOLUTION PROPOSING AN AMENDMENT OF THE
CONSTITUTION OF THE UNITED STATES, RELATIVE
TO THE MODE OF ELECTING THE PRESIDENT AND
VICE PRESIDENT ;*

DELIVERED IN THE SENATE OF THE UNITED STATES,
DECEMBER 2, 1803.



MR. PRESIDENT,

THE opposition to this discriminating amendment to the constitution, is condensed into a single stragem, namely, an effort to excite the passion of jealousy in various forms. Endeavors have been made to excite geographical jealousies ; a jealousy of the smaller against the larger states ; a jealousy in the people against the idea of amending the constitution ; and even a jealousy against individual members of this House. Sir, is this passion a good medium through which to discern truth, or is it a mirror calculated to reflect error ? Will it enlighten or deceive ? Is it planted in good or in evil—in moral or in vicious principles ? Wherefore, then, do gentlemen endeavor to blow it up ? Is it because they distrust the strength of their arguments, that they resort to this furious and erring passion ? Is it because they know, that

———Trifles, light as air,
Are, to the jealous, confirmation strong
As proofs of holy writ.———

So far as these efforts have been directed towards a geographical demarcation of the interests of this union

* See page 320.


into north and south, in order to excite a jealousy of one division against another; and so far as they have been used to create suspicions of individuals, they have been either so feeble, inapplicable, or frivolous, as to bear but lightly upon the question, and to merit but little attention. But the attempts to array states against states, because they differ in size, and to prejudice the people against the idea of amending their constitution, bear a more formidable aspect, and ought to be repelled; because they are founded on principles the most mischievous and inimical to the constitution, and could they be successful, are replete with great mischiefs.

Towards exciting this jealousy of smaller states against larger states, the gentleman from Connecticut, (Mr. Tracy,) has labored to prove, that the federal principle of the constitution of the United States was founded in the idea of minority invested with operative power: that in pursuance of this principle, it was contemplated and intended, that the election of a President should frequently come into the House of Representatives; and to divert it from thence by this amendment, would trench upon the federal principle of our constitution, and diminish the rights of the smaller states, bestowed by this principle upon them. This was the scope of his argument to excite their jealousy, and is the amount also of several other arguments delivered by gentlemen on the same side of the question. I do not question the words, but the ideas of gentlemen. Words, selected from their comrades, are easily asserted to misrepresent opinions; as I have myself experienced, during the discussion on the subject.

This idea of federalism ought to be well discussed by the smaller states, before they will suffer it to produce its intended effect; that of exciting their jealousy against the larger. To me it appears to be evidently incorrect. Two principles sustain our constitution; one, a majority of the people; the other, a majority of the states; the first was necessary to preserve the li-

erty, or sovereignty of the people; the last, to preserve the liberty, or sovereignty of the states. But both are founded in the principle of majority; and the effort of the constitution, is to preserve this principle in relation both to the people and the states, so that neither species of sovereignty, or independence, should be able to destroy the other. Many illustrations might be adduced. That of amending the constitution will suffice. Three fourths of the states must concur in this object, because a less number, or a majority of states, might not contain a majority of people; therefore, the constitution is not amendable by a majority of states, lest a species of state sovereignty might, under color of amending the constitution, infringe the right of the people. On the other hand, a majority of the people residing in the large states, cannot amend the constitution, lest they should diminish or destroy the sovereignty of the small states, the federal union, or federalism itself. Hence a concurrence of the states, to amend the constitution, became necessary; not because federalism was founded in the idea of minority; but for a reason the very reverse of that idea; that is, to cover the will, both of a majority of the people and a majority of states, so as to preserve the great element of self-government, as it regarded state sovereignty, and also as it regarded the sovereignty of the people.

For this great purpose, certain political functions are assigned to be performed, under the auspices of the state or federal principle; and certain others, under the popular principle. It was the intention of the constitution, that these functions should be performed in conformity to its principle. If that principle is in fact a government of a minority, then these functions ought to be performed by a minority. When the federal principle is performing a function, according to this idea, a minority of the states ought to decide. And by the same mode of reasoning, when the popular principle is performing a function, then a minority



of the people ought to decide. This brings us precisely to the question of the amendment. It is the intention of the constitution, that the popular principle shall operate in the election of a President and vice president. It is also the intention of the constitution that the popular principle, in discharging the functions committed to it by the constitution, should operate by a majority and not by a minority. That the majority of the people should be driven by an unforeseen state of parties, to the necessity of relinquishing their will, in the election of one or the other of these officers; or that the principle of majority, in a function confided to the popular will, should be deprived of half its rights, and be laid under a necessity of violating its duty to preserve the other half, is not the intention of the constitution.

But the gentleman from Connecticut has leaped over all this ground, and gotten into the House of Representatives, without considering the principles of the constitution, as applicable to the election of President and vice president by electors, and distinguishing them from an election by the House of Representatives. And by mingling and interweaving the two modes of electing together, a considerable degree of complexity has been produced. If, however, it is admitted, that, in an election of a President and vice president by electors, the will of the electing majority ought fairly to operate, and that an election by the will of a minority would be an abuse or corruption of the principles of the constitution, then it follows, that an amendment to avoid this abuse, both accords with, and is necessary to save these principles. In like manner, had an abuse crept into the same election, whenever it was to be made under the federal principle by the House of Representatives, enabling a minority of states to carry the election, it would not have violated the intention of the constitution to have corrected this abuse also, by an amendment. For, sir, I must suppose it to have been the intention of the constitution, that both

the federal principle, and the popular principle, should operate in those functions respectively assigned to them, perfectly and not imperfectly; that is. the former by a majority of states, and the latter by a majority of the people.

Under this view of the subject, the amendment ought to be considered. Then the question will be, whether it is calculated or not, to cause the popular principle, applied by the constitution in the first instance, to operate perfectly, and to prevent the abuse of an election by a minority. If it is, it corresponds with the intention, diminishes nothing of the rights of the smaller states, and of course affords them no cause of jealousy. Sir, it could never have been the intention of the constitution to produce a state of things, by which a majority of the popular principle should be under the necessity of voting against its judgment, to secure a President; and by which a minor faction should acquire a power capable of defeating the majority in the election of a President, or of electing a vice president, contrary to the will of a majority of the electing principle. To permit this abuse, would be a fraudulent mode of defeating the operation of the popular principle in this election, in order to transfer it to the federal principle; to disinherit the people, for the sake of endowing the House of Representatives; whereas it was an accidental, and not an artificial dis-appointment in the election of a President, against which the constitution intended to provide. A fair and not an unfair attempt to elect, was previously to be made by the popular principle, before the election was to go into the House of Representatives. And if the people of all the states, both large and small, should, by an abuse of the real design of the constitution, be bubbled out of the election of executive power, by leaving to them the nominal right of an abortive effort, and transferring to the House of Representatives the substantial right of a real election, nothing will remain but to corrupt the election in that House, by some of those abuses of which elections by diets

are susceptible, to bestow upon executive power an aspect, both formidable and inconsistent with the principles by which the constitution intended to mould it. The great check imposed upon executive power, was a popular mode of election; and the true object of jealousy, which ought to attract the attention of the people of every state, is any circumstance, tending to diminish or destroy that check. It was also a primary intention of the constitution, to keep executive power independent of legislative; and although a provision was made for its election by the House of Representatives in a possible case, that possible case never was intended to be converted into the active rule, so as to destroy, in a degree, the line of separation and independency between executive and legislative power. The controversy is not, therefore, between larger and smaller states, but between the people of every state, and the House of Representatives. Is it better that the people—a fair majority of the popular principle—should elect executive power; or that a minor faction should be enabled to embarrass and defeat the judgment and will of this majority, and throw the election into the House of Representatives? This is the question. If this amendment should enable the popular principle to elect executive power, and thus keep it separate and distinct from legislation, the intention of the constitution, the interest of the people, and the principles of our policy will be preserved; and if so, it is as I have often endeavored to prove in this debate, the interest of the smaller states themselves that the amendment should prevail. For, sir, is an exposure of their representatives to bribery and corruption, (a thing which may possibly happen at some future day, when men lose that public virtue which now governs them,) an acquisition more desirable than all those great objects, best, (if not exclusively,) attainable, by the election of executive power by the popular principle of the federal government, as the constitution itself meditates and prefers?

So far, then, the amendment strictly coincides with

the constitution, and with the interests of the people of every state in the union. But suppose, by some rare accident, the election should still be sent into the House of Representatives; does not the amendment then afford cause of jealousy to the smaller states? Sir, each state has but one vote, whether it is large or small; and the President and vice president are still to be chosen out of five persons. Such is the constitution in both respects now. To have enlarged the number of nominees, would have increased the occurrence of an election by the House of Representatives; and if, as I have endeavored to prove, it is for the interest of every state, that the election should be made by the popular principle of government and not by this House; then it follows, that whatever would have a tendency to draw the election into this House, is against the interest of every state in the union; and that every state in the union is interested to avoid an enlargement of the nominees, if it would have such a tendency.

Sir, the endeavor to excite a national jealousy against the idea of amending the constitution, is, in my view, infinitely more dangerous and alarming, than even the attempt to marshal states against states. The gentleman from Connecticut, (Mr. Tracy,) has twice pronounced with great emphasis, "man is man," and attempted to make inferences against all attempts to amend our constitution, from the evil moral qualities with which human nature is afflicted! Sir, he has forgotten, that governments as well as nations are constituted of men, and that if the vices of governed man, ought to alarm us for the safety of liberty, the vices of governing man, are not calculated to assuage our apprehensions. Sir, it is this latter species of depravity, which has suggested to the people of America, a new idea, enforced by constitutions. Permit me, to illustrate this new idea, by the terms political law and municipal law. The former is that law, called constitutional, contrived and enacted in the United States, to

control those evil moral qualities, to which this creature "man" is liable, when invested with power! The latter is that law enacted to control the vices of man in his private capacity. If the former species of law should be suffered to remain unchanged, the effects would be the same, as if the latter should remain unchanged. Both, unaltered, would be evaded by the ingenuity, avarice and ambition of public man, as well as private man. And therefore, it is as necessary for the preservation of liberty, that constitutions or political law, should be amended from time to time, in order to preserve liberty against the avarice and ambition of men in power, by meeting and controlling their artifices; as it is occasionally to amend municipal law, for the preservation of property against the vicious practices of men not in power.

To illustrate this argument, I will repeat a position which I lately advanced, namely, that the substance of a constitution may be effectually destroyed, and yet its form may remain unaltered. England illustrates it. The government of that country took its present form in the thirteenth century; but its aspect, in substance, has been extremely different at different periods, under the same form. Without taking time to mark the changes, in substance, which have taken place under the form of kings, lords and commons, it will suffice to cast our eyes upon the present state of that government. What are now its chief and substantial energies? Armies, debt, executive patronage, penal laws and corporations. These are the modern energies or substance of the English monarchy; to the ancient English monarchy they were unknown. Of the ancient, they were substantial abuses; for, whether these modern energies are good or bad, they overturned the ancient monarchy substantially, without altering its form. Under every change of administration, these abuses proceeded. The outs were clamorous for preserving the constitution, as they called it; for though divorced from its administration, the hope of getting in,

again caused them to maintain abuses, by which their avarice or ambition might be gratified upon the next turn of the wheel; just as in Prussia, where divorces are common, nothing is more usual than for late husbands to affect a violent passion for a former wife, if she carried off from him a good estate! And the ins, fearing the national jealousy, and the prepossession against amending the form of government, and meeting new abuses by new remedies, brought no relief to the nation. So that, under every change of men, abuses proceeded.

The solution of this effect exists in the species of political craft, similar to priestcraft. Mankind were anciently deprived of their religious liberty, by a dissemination of a fanatical zeal for some idol; in times of ignorance, this idol was of physical structure; and when that fraud was detected, a metaphysical idol in the shape of a tenet or dogma, was substituted for it, infinitely more pernicious in its effects, because infinitely more difficult of detection. The same system has been pursued by political craft. It has ever labored to excite the same species of idolatry and superstition, for the same reason, namely, to conceal its own frauds and vices. Sometimes it sets up a physical, at others, a metaphysical idol, as the object of vulgar superstition. Of one, the former "grand monarch of France;" of the other, the present "church and state" tenet of England, is an evidence. And if our constitution is to be made like the "church and state" tenet of England; a metaphysical, political idol, which it will be sacrilege to amend, even for the sake of saving both that and the national liberty; and if, like that tenet, it is to be exposed to all the means which centuries may suggest to vicious men, for its substantial destruction; it is not hard to imagine that it, also, may become a monument of the inefficacy of unalterable forms of political law to correct avarice and ambition in the new and multifarious shapes they are forever assuming.

A constitution may allegorically be considered as a

temple for the preservation of the treasure of liberty. Around it, may be posted one, two or three, or more sentinels; but unless these sentinels are themselves watched by the people, and unless the injuries they are frequently committing upon the temple, are diligently repaid, such is the nature of man in power, that the very sentinels themselves have invariably broken into the temple, and conveyed away the treasure. And this because of the delusion inspired by political idolatry, which forbids nations to meet abuses by amending their governments or constitutions; and teaches them, that municipal law alone will suffice for their happiness.

Permit me, sir, to illustrate this argument by declaring how I would proceed, if such was my design, to destroy the constitution of the United States; premising that I speak prospectively and not retrospectively. I would have recourse to those very energies which constitute the English monarchy; armies, debt, executive patronage, penal laws, and corporations. I would endeavor, by these monarchical energies, to produce the same effects as in England; and I would hide my intentions by exciting a fanatical adoration for the constitution, which I would endeavor to make a metaphysical idol; and which I would myself adore—in order to destroy. Whilst I pretended to be its devotee, it should become my screen.

This, sir, will be the consequence, if the people of the United States should become jealous of amending the constitution; and therefore this species of jealousy, so industriously attempted to be excited, is calculated, if it could operate, to bring upon them the utmost calamity. Abuses of a political system will happen; and amendments only can meet abuses. Public opinion, and not an idolatrous tenet, is the element of our policy; and however the gentleman from Massachusetts, (Mr. Pickering,) may deride the opinion of the people, it is the element in which our policy is rooted, and which can at all times be safely intrusted with moulding their form of government.

[Mr. Pickering here explained.]

Sir, I quote gentlemen's ideas and not their words; is it not true that the gentleman ridiculed a recommendation of this very amendment, even from a state legislature, because of some grammatical inaccuracy; and that he reasoned against the possibility of knowing what the public opinion was? And yet, however inaccurately it may be expressed, that gentleman certainly has had sufficient evidence to convince him, that public opinion is really a noun substantive.

It has been urged, sir, by the gentlemen in opposition, in a mode, as if they supposed we wished to conceal or deny it, that one object of this amendment, is to bestow upon the majority a power to elect a vice president. Sir, I avow it to be so. This is one object of the amendment; and the other (as to which I have heretofore expressed my sentiments,) is to enable the electors, by perfecting the election of a President, to keep it out of the House of Representatives. Are not both objects correct, if, as I have endeavored to prove, the constitution, in all cases wherein it refers elections to the popular principle, intended that principle to act by majorities? Did the constitution intend that any minor faction should elect a vice president? If not, then an amendment to prevent it, accords with, and is preservative of the constitution. Permit me here again to illustrate by an historical case. England, in the time of Charles the second, was divided into two parties; protestants and papists; and the heir to the throne was a papist. The protestants, constituting the majority of the nation, passed an exclusion bill; but it was defeated, and the minor papist faction, in the person of the duke of York, got possession of executive power. The consequences were, domestic oppressions and rebellions, foreign wars occasionally, for almost a century, and the foundation of a national debt, under which the nation has been ever since groaning, and under which the government will finally expire.

Had the majority carried and executed the proposed exclusion of James II. from executive power, the English would have escaped all these calamities. Such precisely may be our case. I beg again that it may be understood, that in this application, I speak prospectively, and not retrospectively.

But it is far from being improbable, that in place of these religious parties, political parties may arise of equal zeal and animosity. We may at some future day, see our country divided into a republican party and a monarchical party. Is it wise, or according to the intention of the constitution, that a minor monarchical faction, should, by any means, acquire the power of electing a vice president; the possible successor to executive power? Ought a republican majority to stake the national liberty upon the frail life of one man? Will not a monarchical executive, overturn the system of a republican executive? And ought the United States to shut their eyes upon this possible danger, until the case shall happen, when it may be too late to open them?

Sir, let us contemplate the dreadful evils which the English nation have suffered, from the cause of investing executive power in a man, hostile to the national opinion; and avoid them. They suffered, because their exclusion bill was abortive. Election is our exclusion bill. Its efficacy depends upon its being exercised by a majority. It is only a minority, which can render election insufficient to exclude monarchical principles from executive power. It is against minority that election is intended to operate, because minority is the author of monarchy and aristocracy.

Shall we, sir, be so injudicious, as to make election destroy the principle of election, by adhering to a mode of exercising it, now seen to be capable of bestowing upon a minority the choice of a vice president? Shall we make election, invented to exclude monarchy, a handmaid for its introduction? Or shall we, if we do not see monarchy at this day assailing our republican

system, conclude that it never will; although we know that this system has but two foes, of whom monarchy is one? No, sir, let us rather draw instruction from the prophetic observations of a member of the English house of commons, whilst the bill for excluding James II. was depending; who said:

“ I hear a lion in the lobby roar :
Say, Mr. Speaker, shall we shut the door,
And keep him there ? Or shall we let him in,
To try if we can get him out again.”

Instead of shutting the door, the English left it open; tyranny got in; and the evils produced, by its expulsion, to that nation, may possibly have been equal to those which submission would have produced.

Sir, much has been said about the rights of minorities, and the tendency of this amendment to keep up party spirit. I wish I could hear these rights of minorities defined. It is easy to comprehend the justice of the position, “ that every individual in society has equal rights, whether he belongs to a majority or a minority;” but the idea of a minor faction having political rights, as a faction, to me is incomprehensible. On the contrary, I consider all minor factions as inflamed, excited and invigorated by a prospect of success; just as the popish faction, in the period quoted of the English history, was kept alive and propelled to make attempts, which they never would have made, had it not been for the excitement arising from a prospect of gaining possession of executive power; so here, if at a future day, a minor and monarchical party should arise, that also will be propelled and excited, by the chance of getting possession of executive power, to keep party spirit alive, and to make attempts, which they never would have made, if no such excitement existed. Hence the amendment, if it will have the effect of depriving a minor faction of the possibility of getting possession of executive power, will suppress and not provoke party and faction.

Mr. President, we have been warned, by a picture of the evils produced by the French revolution, to forbear to amend our constitution; for what end I am at a loss to conjecture. Sir, how are these arguments intended to apply to the people of the United States? If the state of national information in France, has disqualified the great mass of that nation for the enjoyment of self-government, does it therefore follow, that the people of America are disqualified for self-government? If this state adapts the French nation for the species of government now existing in France, does it follow, that we are adapted for a similar government? Sir, it is our superior degree of national knowledge, which enables us safely to use national opinion as an element of government. This is evinced by facts. In France, constitutions were several times made and amended, without producing good effect; in America, constitutions have been, in many instances, perhaps to the extent of sixty or seventy, made, repeated and amended, without producing the least disturbance or evil effects in a single case. Changes in France, were often for the worse; here, generally, and perhaps constantly, for the better. It is because the public will is here rooted in a sufficient degree of public knowledge, to preserve a moderate and free government. Shall we sacrifice this will, and the right to amend our constitutions, to a species of metaphysical idolatry, although we owe to these sources all the prosperity and happiness we now possess? For the doctrine, "that it is a species of political sacrilege to amend constitutions, and that the people should be jealous of every such attempt," is precisely the best means to destroy the right in the people to do so. It is a doctrine levelled against the people themselves, under the predominance of whose will the right can only be exercised; and tending to throw this mode of national self-defence against the arts of avarice and ambition, into the back ground; whilst these foes can carry on their encroachments upon liberty and property, by

form of law. Let not, then, sir, the people of the United States be deterred from exercising their right to alter their constitutions, so frequently and so successfully exercised, by a picture of the French revolution.

Finally, Mr. President, this amendment receives my approbation and support, because I think it conformable to public opinion, evidently the special recommendation of sundry states, and a concurrence of a great majority of the representatives of the people in the other House; because it accords with the principle of self-government, that this expression of the public will should be obeyed, that the right of the nation to amend the form of its government, should, upon that ground, be solemnly recognized; because elections, the result of preference, are more consistent with moral rectitude, than those influenced or guided by intrigue, party artifice, or the intrigues of diets; and because it was the intention of the constitution, that the election of a President and vice president should be determined by a fair expression of the public will by a majority, and not that this intention should be defeated by the subsequent occurrence of a state of parties, neither foreseen nor contemplated by the constitution or those who made it.

INAUGURAL ADDRESS
OF
THOMAS JEFFERSON.
PRESIDENT OF THE UNITED STATES.

DELIVERED MARCH 4, 1805.



PROCEEDING, fellow-citizens, to that qualification which the constitution requires, before my entrance on the charge again conferred on me, it is my duty to express the deep sense I entertain of this new proof of confidence from my fellow-citizens at large, and the zeal with which it inspires me, so to conduct myself as may best satisfy their just expectations.

On taking this station on a former occasion, I declared the principles on which I believed it my duty to administer the affairs of our commonwealth. My conscience tells me that I have, on every occasion, acted up to that declaration, according to its obvious import, and to the understanding of every candid mind.

In the transaction of your foreign affairs, we have endeavored to cultivate the friendship of all nations, and especially of those with which we have the most important relations. We have done them justice on all occasions, favored where favor was lawful, and cherished mutual interests and intercourse on fair and equal terms. We are firmly convinced, and we act on that conviction, that with nations, as with individuals, our interests, soundly calculated, will ever be found inseparable from our moral duties; and history bears witness to the fact, that a just nation is trusted on its

word, when resource is had to armaments and wars to bridle others.

At home, fellow-citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These covering our land with officers, and opening our doors to their intrusions, had already begun that process of domiciliary vexation, which, once entered, is scarcely to be restrained from reaching successively every article of produce and property. If among these taxes some minor ones fell which had not been inconvenient, it was because their amount would not have paid the officers who collected them, and because, if they had any merit, the state authorities might adopt them, instead of others less approved.

The remaining revenue on the consumption of foreign articles, is paid cheerfully by those who can afford to add foreign luxuries to domestic comforts, being collected on our sea-board and frontiers only, and incorporated with the transactions of our mercantile citizens, it may be the pleasure and the pride of an American to ask—what farmer—what mechanic—what laborer, ever sees a tax-gatherer of the United States? These contributions enable us to support the current expenses of the government, to fulfil contracts with foreign nations, to extinguish the native right of soil within our limits, to extend those limits, and to apply such a surplus to our public debts, as places at a short day their final redemption, and that redemption once effected, the revenue thereby liberated, may, by a just repartition among the states, and a corresponding amendment of the constitution, be applied, in time of peace, to rivers, canals, roads, arts, manufactures, education, and other great objects within each state. In time of war, if injustice by ourselves or others must sometimes produce war, increased as the same revenue will be increased by population and consumption, and aided by other resources reserved for that crisis,

it may meet, within the year, all the expenses of the year, without encroaching on the rights of future generations by burdening them with the debts of the past. War will then be but a suspension of useful works, and a return to a state of peace, a return to the progress of improvement.

I have said, fellow-citizens, that the income reserved, had enabled us to extend our limits; but that extension may possibly pay for itself, before we are called on, and in the mean time may keep down the accruing interest: in all events, it will replace the advances we have made. I know that the acquisition of Louisiana has been disapproved by some, from a candid apprehension that the enlargement of our territory would endanger its union. But who can limit the extent to which the federative principle may operate effectively? The larger our association, the less will it be shaken by local passions; and in any view, is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children, than by strangers of another family? With which shall we be most likely to live in harmony and friendly intercourse?

In matters of religion, I have considered that its free exercise is placed by the constitution independent of the powers of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies.

The aboriginal inhabitants of these countries I have regarded with the commiseration, their history inspires. Endowed with the faculties and the rights of men, breathing an ardent love of liberty and independence, and occupying a country which left them no desire, but to be undisturbed, the stream of overflowing population from other regions, directed itself on these shores. Without power to divert, or habits to contend against, they have been overwhelmed by the

current, or driven before it : now reduced within limits too narrow for the hunter's state, humanity enjoins us to teach them agriculture and the domestic arts ; to encourage them to that industry which alone can enable them to maintain their place in existence, and to prepare them in time for that state of society, which to bodily comforts adds the improvement of the mind and morals. We have, therefore, liberally furnished them with the implements of husbandry and household use ; we have placed among them instructors in the arts of first necessity ; and they are covered with the ægis of the law against aggressors from among ourselves.

But the endeavors to enlighten them on the fate which awaits their present course of life, to induce them to exercise their reason, follow its dictates and change their pursuits with the change of circumstances, have powerful obstacles to encounter ; they are combatted by the habits of their bodies, prejudice of their minds, ignorance, pride and the influence of interested and crafty individuals among them, who feel themselves something in the present order of things, and fear to become nothing in any other. These persons inculcate a sanctimonious reverence for the customs of their ancestors ; that whatsoever they did must be done through all time ; that reason is a false guide, and to advance under its council in their physical, moral or political condition, is perilous innovation ; that their duty is to remain as their Creator made them, ignorance being safety, and knowledge full of danger : in short, my friends, among them is seen the action and counteraction of good sense and bigotry ; they too have their anti-philosophers, who find an interest in keeping things in their present state, who dread reformation, and exert all their faculties to maintain the ascendancy of habit over the duty of improving our reason and obeying its mandates.

In giving these outlines, I do not mean, fellow-citizens, to arrogate to myself the merit of the measures ;

that is due, in the first place, to the reflecting character of our citizens at large, who, by the weight of public opinion, influence and strengthen the public measures; it is due to the sound discretion with which they select from among themselves those to whom they confide the legislative duties; it is due to the zeal and wisdom of the characters thus selected, who lay the foundations of public happiness in wholesome laws, the execution of which alone remains for others; and it is due to the able and faithful auxiliaries, whose patriotism has associated with me in the executive functions.


During this course of administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution so important to freedom and science are deeply to be regretted, inasmuch as they tend to lessen its usefulness, and to sap its safety; they might indeed have been corrected by the wholesome punishments reserved and provided by the laws of the several states against falsehood and defamation; but public duties, more urgent, press on the time of public servants, and the offenders have, therefore, been left to find their punishment in the public indignation.

Nor was it uninteresting to the world that an experiment should be fairly and fully made, whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth: whether a government, conducting itself in the true spirit of its constitution, with zeal and purity, and doing no act which it would be unwilling the whole world should witness, can be written down by falsehood and defamation. The experiment has been tried; you have witnessed the scene; our fellow-citizens have looked on, cool and collected; they saw the latent source from which these outrages proceeded; they gathered around their public functionaries, and when the constitution called them to the decision by suffrage, they pronounced their verdict, honorable to those who had

served them, and consolatory to the friend of man, who believes he may be entrusted with his own affairs.

No inference is here intended, that the laws, provided by the state against false and defamatory publications, should not be enforced; he who has time renders a service to public morals and public tranquillity, in reforming these abuses by the salutary coercions of the law; but the experiment is noted to prove, that, since truth and reason have maintained their ground against false opinions in league with false facts, the press, confined to truth, needs no other legal restraint; the public judgment will correct false reasonings and opinions on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.

Contemplating the union of sentiment, now manifested so generally, as auguring harmony and happiness to our future course, I offer to our country sincere congratulations. With those too, not yet rallied to the same point, the disposition to do so is gaining strength; facts are piercing through the veil drawn over them; and our doubting brethren will at length see, that the mass of their fellow-citizens with whom they cannot yet resolve to act, as to principles and measures, think as they think, and desire what they desire; that our wish, as well as theirs, is that the public efforts may be directed honestly to the public good, that peace be cultivated, civil and religious liberty unassailed, law and order preserved, equality of rights maintained, and that state of property equal or unequal which results to every man from his own industry or that of his fathers. When satisfied of these views, it is not in human nature that they should not approve and support them. In the mean time, let us cherish them with patient affection; let us do them justice, and more than justice, in all competitions of



interest; and we need not doubt that truth, reason and their own interests, will at length prevail, will gather them into the fold of their country, and will complete their entire union of opinion, which gives to a nation the blessing of harmony, and the benefit of all its strength.

I shall now enter on the duties to which my fellow-citizens have again called me; and shall proceed in the spirit of those principles which they have approved. I fear not that any motives of interest may lead me astray; I am sensible of no passion which could seduce me knowingly from the path of justice; but the weakness of human nature and the limits of my own understanding will produce errors of judgment sometimes injurious to your interests; I shall need, therefore, all the indulgence I have heretofore experienced—the want of it will certainly not lessen with increasing years. I shall need too the favor of that Being in whose hands we are, who led our forefathers, as Israel of old, from their native land, and planted them in a country flowing with all the necessities and comforts of life; who has covered our infancy with his Providence, and our riper years with his wisdom and power; and to whose goodness I ask you to join with me in supplications, that he will so enlighten the minds of your servants, guide their councils, and prosper their measures, that whatsoever they do shall result in your good, and shall secure to you the peace, friendship and approbation of all nations.

SPEECH OF JOSIAH QUINCY,


DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, NOVEMBER 28, 1808,

On the following Resolution, "*Resolved*, that the United States cannot, without a sacrifice of their rights, honor and independence, submit to the late edicts of Great Britain and France."

MR. CHAIRMAN,

I AM not, in general, a friend to abstract legislation. Ostentatious declaration of general principles is so often the resort of weakness and of ignorance; it is so frequently the subterfuge of men who are willing to amuse, or who mean to delude the people, that it is with great reluctance, I yield to such a course my sanction. If, however, a formal annunciation of a determination to perform one of the most common and undeniable of national duties be deemed, by a majority of this House, essential to their character, or to the attainment of public confidence, I am willing to admit, that the one now offered, is as unexceptionable as any it would be likely to propose.

In this view, however, I lay wholly out of sight the report of the committee, by which it is accompanied and introduced. The course advocated in that report, is, in my opinion, loathsome; the spirit it breathes disgraceful; the temper it is likely to inspire, neither calculated to regain the rights we have lost, nor to preserve those, which remain to us. It is an established maxim, that, in adopting a resolution offered by a committee in this House, no member is pledged to support the reasoning, or made sponsor for the facts which they have seen fit to insert in it. I exercise, therefore, a common right, when I subscribe to the resolution, not on the principles of the committee, but on those which obviously result from its terms, and are the plain meaning of its expressions.



I agree to this resolution, because, in my apprehension, it offers a solemn pledge to this nation ;—a pledge not to be mistaken, and not to be evaded, that the present system of public measures shall be totally abandoned. Adopt it, and there is an end of the policy of deserting our rights, under a pretence of maintaining them. Adopt it, and we no longer yield to the beck of haughty belligerents the rights of navigating the ocean—that choice inheritance bequeathed to us by our fathers. Adopt it, and there is a termination of that base and abject submission, by which this country has for these eleven months been disgraced and brought to the brink of ruin.

That the natural import and necessary implication of the terms of this resolution are such as I have suggested, will be apparent from a very transient consideration. What do its terms necessarily include ? They contain an assertion and a pledge. The assertion is, that the edicts of Great Britain and France are contrary to our rights, honor and independence. The pledge is, that we will not submit to them.

Concerning the assertion, contained in this resolution, I would say nothing, were it not that I fear that those, who have so long been in the habit of looking at the orders and decrees of foreign powers, as the measure of the rights of our own citizens, and have been accustomed, in direct subserviency to them, of prohibiting commerce altogether, might apprehend that there was some lurking danger in such an assertion. They may be assured there can be nothing more harmless. Neither Great Britain or France ever pretended that those edicts were consistent with American rights. On the contrary, both these nations ground those edicts on the principle of imperious necessity, which admits the injustice done, at the very instant of executing the act of oppression. No gentleman need have any difficulty in screwing his courage up to this assertion. Neither of the belligerents will contradict it. Mr. Turreau and Mr. Erskine will both of them countersign the declaration to-morrow.

With respect to the pledge, contained in this resolution, understood according to its true import, it is a glorious one. It opens new prospects. It promises a change in the disposition of this House. It is a solemn assurance to the nation, that it will no longer submit to these edicts. It remains for us, therefore, to consider what submission is, and what the pledge not to submit implies.

One man submits to the order, decree, or edict of another, when he does that thing which such order, decree, or edict commands; or when he omits to do that thing, which such order, decree, or edict prohibits. This, then, is submission. It is to do as we are bidden. It is to take the will of another as the measure of our rights. It is to yield to his power; to go where he directs, or to refrain from going where he forbids us.

If this be submission, then the pledge not to submit implies the reverse of all this. It is a solemn declaration, that we will not do that thing, which such order, decree, or edict commands, or that we will do what it prohibits. This, then, is freedom. This is honor. This is independence. It consists in taking the nature of things, and not the will of another, as the measure of our rights. What God and nature has offered us, we will enjoy in despite of the commands, regardless of the menaces of iniquitous power.

Let us apply these correct and undeniable principles to the edicts of Great Britain and France, and the consequent abandonment of the ocean by the American government. The decrees of France prohibit us from trading with Great Britain. The orders of Great Britain prohibit us from trading with France. And what do we? Why, in direct subserviency to the edicts of each, we prohibit our citizens from trading with either. We do more, as if unqualified submission was not humiliating enough, we descend to an act of supererogation in servility; we abandon trade altogether; we not only refrain from that parti-

cular trade, which their respective edicts proscribe, but lest the ingenuity of our merchants should enable them to evade their operation, to make submission doubly sure, the American government virtually re-enact the edicts of the belligerents and abandon all the trade, which, notwithstanding the practical effects of their edicts, remain to us. The same conclusion will result if we consider our embargo in relation to the objects of this belligerent policy. France, by her edicts, would oppress Great Britain, by destroying her commerce and cutting off her supplies. All the continent of Europe, in the hand of Bonaparte, is made subservient to this policy. The embargo law of the United States, in its operation, is a union with this continental coalition against British commerce, at the very moment most auspicious to its success. Can any thing be more in direct subserviency to the views of the French emperor? If we consider the orders of Great Britain, the result will be the same. I proceed, at present, on the supposition of a perfect impartiality in our administration towards both belligerents, so far as relates to the embargo law. Great Britain had two objects in view in issuing her orders. First, to excite discontent in the people of the continent, by depriving them of their accustomed colonial supplies. Second, to secure to herself that commerce of which she deprived neutrals. Our embargo co-operates with the British views in both respects. By our dereliction of the ocean, the continent is much more deprived of the advantages of commerce, than it would be possible for the British navy to effect; and by removing our competition, all the commerce of the continent which can be forced, is wholly left to be reaped by Great Britain. The language of each sovereign is in direct conformity to these ideas. Napoleon tells the American minister virtually, that we are very good Americans; that although he will not allow the property he has in his hands to escape him, nor desist from burning and capturing our vessels on every occasion, yet

that he is, thus far, satisfied with our co-operation. And what is the language of George the third, when our minister presents to his consideration the embargo laws. Is it *Le Roy s'avisera?* The king will reflect upon them. No, it is the pure language of royal approbation, *Le Roy le veut.* The king wills it. Were you colonies, he could expect no more. His subjects as inevitably get that commerce which you abandon, as the water will certainly run into the only channel which remains after all the others are obstructed. In whatever point of view we consider these embargo laws in relation to those edicts and decrees, we shall find them co-operating with each belligerent in its policy. In this way, I grant, our conduct may be impartial; but what has become of our American right to navigate the ocean? It is abandoned in strict conformity to the decrees of both belligerents. This resolution declares, that we will no longer submit to such degrading humiliation. Little as I relish, I will take it, as the harbinger of a new day; the pledge of a new system of measures.


Perhaps, here, in strictness, I ought to close my observations. But the report of the committee, contrary to what I deem the principle of the resolution, unquestionably recommends the continuance of the embargo laws. And such is the state of the nation, and in particular that portion of it, which in part I represent, under their oppression, that I cannot refrain from submitting some considerations on that subject.

When I enter on the subject of the embargo, I am struck with wonder at the very threshold. I know not with what words to express my astonishment. At the time I departed from Massachusetts, if there was an impression, which I thought universal, it was, that, at the commencement of this session, an end would be put to this measure. The opinion was not so much, that it would be terminated, as that it was then at an end. Sir, the prevailing sentiment, according to my

apprehension, was stronger than this—even that the pressure was so great, that it could not possibly be endured; that it would soon be absolutely insupportable. And this opinion, as I then had reason to believe, was not confined to any one class or description, or party; that even those, who were friends of the existing administration, and unwilling to abandon it, were yet satisfied, that a sufficient trial had been given to this measure. With these impressions, I arrive in this city. I hear the incantations of the great enchanter. I feel his spell. I see the legislative machinery begin to move. The scene opens. And I am commanded to forget all my recollections, to disbelieve the evidence of my senses, to contradict what I have seen, and heard, and felt. I hear, that all this discontent is mere party clamor—electioneering artifice; that the people of New England are able and willing to endure this embargo for an indefinite, unlimited period; some say for six months; some a year; some two years. The gentleman from North Carolina, (Mr. Macon,) told us, that he preferred three years of embargo to a war. And the gentleman from Virginia, (Mr. Clopton,) said expressly, that he hoped we should never allow our vessels to go upon the ocean again, until the orders and decrees of the belligerents were rescinded. In plain English, until France and Great Britain should, in their great condescension permit. Good heavens! Mr. Chairman, are men mad? Is this House touched with that insanity, which is the never failing precursor of the intention of heaven to destroy? The people of New England, after eleven months' deprivation of the ocean, to be commanded still longer to abandon it, for an undefined period; to hold their unalienable rights, at the tenure of the will of Britain or of Bonaparte! A people, commercial in all aspects, in all their relations, in all their hopes, in all their recollections of the past, in all their prospects of the future; a people, whose first love was the ocean, the choice of their childhood, the approbation

of their manly years, the most precious inheritance of their fathers, in the midst of their success, in the moment of the most exquisite perception of commercial prosperity, to be commanded to abandon it, not for a time limited, but for a time unlimited; not until they can be prepared to defend themselves there, (for that is not pretended,) but until their rivals recede from it; not until their necessities require, but until foreign nations permit! I am lost in astonishment, Mr. Chairman. I have not words to express the matchless absurdity of this attempt. I have no tongue to express the swift and headlong destruction, which a blind perseverance in such a system, must bring upon this nation.

But men from New England, representatives on this floor, equally with myself the constitutional guardians of her interests, differ from me in these opinions. My honorable colleague, (Mr. Bacon,) took occasion, in secret session, to deny that there did exist all that discontent and distress, which I had attempted, in a humble way, to describe. He told us he had travelled in Massachusetts, that the people were not thus dissatisfied, that the embargo had not produced any such tragical effects. Really, sir, my honorable colleague has travelled—all the way from Stockbridge to Hudson; from Berkshire to Boston; from inn to inn; from county court to county court; and doubtless he collected all that important information, which an acute intelligence never fails to retain on such occasions. He found tea, sugar, salt, West India rum and molasses dearer; beef, pork, butter and cheese cheaper. Reflection enabled him to arrive at this difficult result, that in this way the evil and the good of the embargo equalize one another. But has my honorable colleague travelled on the sea-board? Has he witnessed the state of our cities? Has he seen our ships rotting at our wharves, our wharves deserted, our stores tenantless, our streets bereft of active business; industry forsaking her beloved haunts, and hope fled away from places where




she had from earliest time been accustomed to make and to fulfil her most precious promises? Has he conversed with the merchant, and heard the tale of his embarrassments—his capital arrested in his hands, forbidden by your laws to resort to a market, with property four times sufficient to discharge all his engagements, necessitated to hang on the precarious mercy of monied institutions for that indulgence, which preserves him from stopping payment, the first step towards bankruptcy? Has he conversed with our mechanics? That mechanic, who the day before this embargo passed, the very day that you took this bit, and rolled it like a sweet morsel under your tongue, had more business than he had hands, or time or thought to employ in it, now soliciting, at reduced prices, that employment which the rich, owing to the uncertainty in which your laws have involved their capital, cannot afford? I could heighten this picture. I could show you laboring poor in the almshouse, and willing industry dependent upon charity. But I confine myself to particulars, which have fallen under my own observation, and of which ten thousand suffering individuals on the sea-board of New England, are living witnesses that here is nothing fictitious.

Mr. Chairman, other gentlemen must take their responsibilities; I shall take mine. This embargo must be repealed. You cannot enforce it for any important period of time longer. When I speak of your inability to enforce this law, let not gentlemen misunderstand me. I mean not to intimate insurrections or open defiances of them. Although it is impossible to foresee in what acts, that "oppression" will finally terminate, which, we are told, "makes wise men mad." I speak of an inability resulting from very different causes. The gentleman from North Carolina, (Mr. Macon,) exclaimed the other day in a strain of patriotic ardor, "What! shall not our laws be executed? Shall their authority be defied? I am for enforcing them at every hazard." I honor that gentleman's zeal; and I mean no

deviation from that true respect I entertain for him, when I tell him, that in this instance, "his zeal is not according to knowledge."

I ask this House, is there no control to its authority, is there no limit to the power of this national legislature? I hope I shall offend no man, when I intimate that two limits exist;—nature and the constitution. Should this House undertake to declare, that this atmosphere should no longer surround us, that water should cease to flow, that gravity should not hereafter operate, that the needle should not vibrate to the pole, I do suppose, Mr. Chairman—sir, I mean no disrespect to the authority of this House, I know the high notions some gentlemen entertain on this subject;—I do suppose—sir, I hope I shall not offend;—I think I may venture to affirm, that such a law to the contrary notwithstanding, the air would continue to circulate, the Mississippi, the Hudson and the Potomac would roll their floods to the ocean, heavy bodies continue to descend, and the mysterious magnet hold on its course to its celestial cynosure.

Just as utterly absurd and contrary to nature is it, to attempt to prohibit the people of New England, for any considerable length of time, from the ocean. Commerce is not only associated with all the feelings, the habits, the interests and relations of that people, but the nature of our soil, and of our coasts, the state of our population and its mode of distribution over our territory, renders it indispensable. We have five hundred miles of sea-coast; all furnished with harbors, bays, creeks, rivers, inlets, basins, with every variety of invitation to the sea, with every species of facility to violate such laws as these. Our people are not scattered over an immense surface, at a solemn distance from each other, in lordly retirement, in the midst of extended plantations and intervening wastes: they are collected on the margin of the ocean, by the sides of rivers, at the heads of bays, looking into the water or on the surface of it for the incitement and the reward of



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has all these sanctions ; it is another, on this floor, in the high court of the people's privileges, to advocate its repeal on the ground that it is an invasion of their rights. The embargo laws have unquestionable sanction. They are laws of this land. Yet, who shall deny to a representative of this people the right, in their own favorite tribunal, of bringing your laws to the test of the principles of the constitution ?

Is there any principle more wise, or more generally received among statesmen, than that a law, in proportion to its pressure upon the people, should have its basis in unquestionable authority, as well as necessity. A legislature may sport with the rights of an individual. It may violate the constitution to the ruin of whole classes of men. But once let it begin, by its laws, to crush the hopes of the great mass of the citizens ; let it bring every eye, in the land, to the scrutiny of its laws, and its authority—to be permanent, those laws must possess no flaw in their foundation.

I ask, in what page of the constitution you find the power of laying an embargo ? Directly given, it is nowhere. You have it, then, by construction, or by precedent. By construction of the power to regulate. I lay out of the question the common-place argument, that regulation cannot mean annihilation ; and that what is annihilated, cannot be regulated. I ask this question, can a power be ever obtained by construction, which had never been exercised at the time of the authority given ; the like of which had not only never been seen, but the idea of which had never entered into human imagination, I will not say, in this country, but in the world ? Yet such is this power, which by construction you assume to exercise. Never before did society witness a total prohibition of all intercourse like this in a commercial nation. Did the people of the United States invest this House with a power, of which, at the time of investment, that people had not and could not have had any idea ?—for even in works of fiction, it had never existed. But we have precedent. Precedent is

directly against you. For the only precedent, that in 1794, was in conformity to the embargo power, as it had been exercised in other countries. It was limited. Its duration was known. The power passed from the representatives of this House only for sixty days. In that day, the legislature would not trust even Washington, amid all his well earned influence, with any other than a limited power. But away, sir, with such deductions as these. I appeal to the history of the times, when this national compact was formed. This constitution grew out of our necessities, and it was, in every stage of its formation, obstructed by the jealousies and diverse interests of the different states. The gentlemen of the south had certain species of property, with the control of which they would not trust us in the north. And wisely, for we neither appreciate it as they do, nor could regulate it safely for them. In the east, our sentiment concerning their interest in commerce, and their power to understand its true interests, was, in a great degree similar. The writings of that period exhibit this jealousy, and the fears, excited by it, formed in that portion of the United States a formidable objection to its adoption. In this state of things, would the people of New England consent to convey to a legislature, constituted as this in time must be, a power, not only to regulate commerce, but to annihilate it, for a time unlimited, or altogether? Suppose, in 1788, in the convention of Massachusetts, while debating upon the adoption of this constitution, some hoary sage had arisen, and with an eye looking deep into futurity, with a prophet's ken, had thus addressed the assembly. "Fellow-citizens of Massachusetts, to what ruin are you hastening! Twenty years shall not elapse, before, under a secret and dubious construction of the instrument now proposed for your adoption, your commerce shall be annihilated: the whole of your vast trade prohibited. Not a boat shall cross your harbor, not a coaster shall be permitted to go out of your ports. unless under permis-

sion of the distant head of your nation, and after a grievous visitation of a custom-house officer?" Sir, does any man believe, that, with such a prospect into futurity, the people of that state would have for one moment listened to its adoption? Rather would they not have rejected it with indignation? Yet this, now, is not prophecy. It is history. But this law is not perpetual, it is said. Show the limit to it. Show by what terms, it can be made more perpetual.

The universal opinion, entertained in New England among commercial men, of the total imbecility of this law, as a measure of coercion of either belligerent, is another cause, pregnant with discontent, in that country. It may do well enough to amuse ourselves with calculations of this kind on this floor; but intelligent merchants, masters of vessels, seamen, who are acquainted with the West Indies, and with the European dominions of both powers, speak with sovereign contempt of the idea of starving either of these powers into submission to our plans of policy. The entire failure of this scheme, after a trial of eleven months, would, I should suppose, have satisfied the most obstinate of its hopelessness. Yet it is revived again at this session. We are told, from high authority, of the failure of the wheat harvest in Great Britain, and this has been urged as a further reason for a continuance of this measure. Have gentlemen, who press this argument, informed themselves, how exceedingly small a proportion our export of wheat bears to the whole consumption of the British dominions? Our whole export to all the world, of wheat in its natural and manufactured state, does not amount to seven millions of bushels. The whole consumption of the British dominions exceeds one hundred and fifty millions. Let gentlemen consider what a small object this amount is, in a national point of view, even could the attainment of the whole supply be assumed, as the condition of her yielding to the terms we should prescribe. Are not the borders of the Black Sea, the coast of

Africa, and South America, all wheat countries, open to her commerce?

But the embargo saves our resources. It may justly be questioned, whether, in this point of view, the embargo is so effectual as, at first, men are led to imagine. It may be doubted if the seed-wheat for this harvest is not worth more than the whole crop. I say nothing of the embarrassments of our commerce, of the loss of our seamen, of the sunken value of real estate. But our dead, irredeemable loss by this embargo, during the present year, cannot be stated at less than ten *per centum*, on account of interest and profit on the whole export of our country—that is, on the one hundred and eight millions, ten million eight hundred thousand dollars.

Nor can our loss upon a million tons of unemployed shipping, be stated at less than at twenty dollars the ton—twenty millions of dollars. Thirty millions of dollars is a serious outfit for any voyage of salvation; and the profit ought to be very unquestionable, before a wise man would be persuaded to renew or prolong it. Besides, is it true, that the articles the embargo retains, are, in the common acceptation of the term, resources? I suppose, that by this word, so ostentatiously used on all occasions, it is meant to convey the idea, that the produce thus retained in the country, will be a resource for use, or defence, in case of war, or any other misfortune happening to it. But is this true? Our exports are surplus products—what we raise beyond what we consume. Because we cannot use them, they are surplus. Of course, in this country they have little or no value in use, but only in exchange. Take away the power of exchange, and how can they be called resources? Every year produces sufficient for its own consumption, and a surplus. Suppose an embargo of ten years; will gentlemen seriously contend, that the accumulating surplus of fish, cotton, tobacco and flour, would be a resource for any national exigencies? We cannot consume it,

because the annual product is equal to our annual consumption. Our embargo forbids us to sell it. How, then, is it a resource? Are we stronger or richer for it? The reverse, we are weaker and poorer. Weaker by all the loss of motive to activity, by all the diminution of the industry of the country, which such a deprivation of the power to exchange, produces. And what can be poorer than he, who is obliged to keep what he cannot use, and to labor for that which profiteth not?

[Mr. Quincy here remarked upon the unequal operation of the embargo in different parts of the union. He then proceeded.]

It is in vain to say, that if the embargo was raised, there would be no market. The merchants understand that subject better than you; and the eagerness with which preparations to load were carried on previous to the commencement of this session, speaks, in a language not to be mistaken, their opinion of the foreign markets. But it has been asked in debate, "will not Massachusetts, the cradle of liberty, submit to such privations?" An embargo liberty was never cradled in Massachusetts. Our liberty was not so much a mountain, as a sea-nymph. She was free as air. She could swim, or she could run. The ocean was her cradle. Our fathers met her as she came, like the goddess of beauty, from the waves. They caught her as she was sporting on the beach. They courted her whilst she was spreading her nets upon the rocks. But an embargo liberty; a hand-cuffed liberty; a liberty in fetters; a liberty traversing between the four sides of a prison and beating her head against the walls, is none of our offspring. We abjure the monster. Its parentage is all inland.

The gentleman from North Carolina, (Mr. Macon,) exclaimed the other day, "where is the spirit of '76?" Aye, sir, where is it? Would to heaven, that at our invocation, it would condescend to alight on this floor. But let gentlemen remember, that the spirit of '76 was not a spirit of empty declaration, or of abstract propo-

sitions. It did not content itself with non-importation acts, or non-intercourse laws. It was a spirit of active preparation; of dignified energy. It studied, both to know our rights and to devise the effectual means of maintaining them. In all the annals of '76, you will find no such degrading doctrine, as that maintained in this report. It never presented to the people of the United States, the alternative of war or a suspension of our rights, and recommended the latter rather than to incur the risk of the former. What was the language of that period, in one of the addresses of Congress to Great Britain? "You attempt to reduce us by the sword to base and abject submission. On the sword, therefore, we rely for protection." In that day there were no alternatives presented to dishearten; no abandonment of our rights, under the pretence of maintaining them; no gaining the battle by running away. In the whole history of that period there are no such terms as "embargo; dignified retirement; trying who can do each other the most harm." At that time we had a navy: that name so odious to the influences of the present day. Yes, sir, in 1776, though but in our infancy, we had a navy scouring our coasts, and defending our commerce, which was never for one moment wholly suspended. In 1776, we had an army also; and a glorious army it was! Not composed of men halting from the stews, or swept from the jails; but of the best blood, the real yeomanry of the country—noble cavaliers, men without fear and without reproach. We had such an army in 1776, and Washington at its head. We have an army in 1808, and a head to it.

I will not humiliate those, who lead the fortunes of the nation at the present day, by any comparison with the great men of that period. But I recommend the advocates of the present system of public measures to study well the true spirit of 1776, before they venture to call it in aid of their purposes. It may bring in its train some recollections not suited to give ease, or

hope to their bosoms. I beg gentlemen, who are so frequent in their recurrence to that period, to remember, that among the causes, which led to a separation from Great Britain, the following are enumerated; "unnecessary restrictions upon trade; cutting off commercial intercourse between the colonies; embarrassing our fisheries; wantonly depriving our citizens of necessities; invasion of private property by governmental edicts; the authority of the commander in chief, and under him of the brigadier-general, being rendered supreme in the civil government; the commander in chief of the army made governor of a colony; citizens transferred from their native country for trial." Let gentlemen beware how they appeal to the spirit of '76; lest it come with the aspect, not of a friend, but of a tormentor; lest they find a warning, when they look for support, and instead of encouragement they are presented with an awful lesson.

But repealing the embargo will be submission to tribute. The popular ear is fretted with this word tribute; and an odium is attempted to be thrown upon those, who are indignant at this abandonment of their rights, by representing them as the advocates of tribute. Sir, who advocates it? No man, in this country, I believe. This outcry about tribute is the veriest bugbear that was ever raised in order to persuade men to quit rights, which God and nature had given them. In the first place, it is scarce possible, that, if left to himself, the interest of the merchant could ever permit him to pay the British re-exportation duty, denominated tribute. France, under penalty of confiscation, prohibits our vessels from receiving a visit from an English ship, or touching at an English port. In this state of things, England pretends to permit us to export to France certain articles, paying her a duty. The statement of the case, shows the futility of the attempt. Who will pay a duty to England for permission to go to France to be confiscated? But, suppose there is a mistake in this, and that it may be the in-

terest of the merchant to pay such duty, for the purpose of going to certain destruction, have not you full powers over this matter? Cannot you, by pains and penalties, prohibit the merchant from the payment of such a duty? No man will obstruct you. There is, as I believe, but one opinion upon this subject. I hope, therefore, that gentlemen will cease this outcry about tribute.

However, suppose that the payment of this duty is inevitable, which it certainly is not, let me ask—is embargo independence? Deceive not yourselves. It is palpable submission. Gentlemen exclaim, Great Britain “smites us on one cheek.” And what does administration? “It turns the other also.” Gentlemen say, Great Britain is a robber, she “takes our cloak.” And what say administration? “Let her take our coat also.” France and Great Britain require you to relinquish a part of your commerce, and you yield it entirely. Sir, this conduct may be the way to dignity and honor in another world, but it will never secure safety and independence in this.

At every corner of this great city, we meet some gentlemen of the majority, wringing their hands and exclaiming—“What shall we do? Nothing but embargo will save us. Remove it, and what shall we do?” Sir, it is not for me, an humble and uninfluential individual, at an awful distance from the predominant influences, to suggest plans of government. But to my eye, the path of our duty is as distinct as the milky way; all studded with living sapphires; glowing with cumulating light. It is the path of active preparation; of dignified energy. It is the path of 1776. It consists, not in abandoning our rights, but in supporting them, as they exist, and where they exist—on the ocean, as well as on the land. It consists, in taking the nature of things, as the measure of the rights of your citizens; not the orders and decrees of imperious foreigners. Give what protection you can. Take no counsel of

fear. Your strength will increase with the trial, and prove greater than you are now aware.

But I shall be told, "this may lead to war." I ask, "are we now at peace?" Certainly not, unless retreating from insult be peace; unless shrinking under the lash be peace. The surest way to prevent war is not to fear it. The idea, that nothing on earth is so dreadful as war, is inculcated too studiously among us. Disgrace is worse. Abandonment of essential rights is worse.

Sir, I could not refrain from seizing the first opportunity of spreading before this House the sufferings and exigencies of New England, under this embargo. Some gentlemen may deem it not strictly before us. In my opinion, it is necessarily. For, if the idea of the committee be correct, and embargo is resistance, then this resolution sanctions its continuance. If, on the contrary, as I contend, embargo is submission, then this resolution is a pledge of its repeal.

SPEECH OF WILLIAM B. GILES.

DELIVERED IN THE SENATE OF THE UNITED STATES.

NOVEMBER 24, 1808,


On the following resolution : *Resolved*, That it is expedient that an act, entitled " An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto," be repealed, and that a committee be appointed to prepare and report a bill for that purpose.

MR. PRESIDENT,

* PERMIT me now, sir, to make some observations upon the general character of this measure, as well as replies to some of the more general objections brought against it. I have said, sir, that there are no substitutes for the embargo, but war or submission. I will now proceed to prove this position—a repeal of the embargo without a substitute, is submission; if with a substitute, it is war. Gentlemen in the opposition, seem fully sensible of the delicacy and urgency of this part of the question. When pressed for their substitute, they manifest vast reluctance to producing it.

The gentleman from Delaware, indeed, told us, he was not the pioneer of the administration. I never knew that he was called upon to act in that character; but I hope he will not voluntarily act as the sapper, nor the miner of the administration, especially when he must behold the administration assailed by

* In the first part of Mr. Giles' speech, which is here omitted, he described the situation of the country at the time of the adoption of the embargo, and pointed out the objects it was designed to accomplish. He replied to the objections which had been urged against it as a measure injurious to commerce, agriculture and other branches of industry. He then proceeded to point out the actual effects which it had produced upon France and Great Britain, and what causes had prevented its complete success.



the two most powerful belligerents in the world, unfortunately aided, I fear, too, sir, by a host of domestic sappers and miners, and underminers, into the bargain. I am sure, sir, the gentleman will not take upon himself such a character. The gentleman, however, did not withhold from us an intimation, at least, of his substitute—an intimation which could not be mistaken. It was war with France. The question, therefore, as to him, is at an end upon this point. War is his substitute.

But the gentleman from Connecticut, (Mr. Hillhouse,) after protesting against furnishing any substitute, intimates merely, that he is in favor of an armed commerce. Why, sir, do gentlemen in the opposition manifest such a reluctance in producing a substitute, if they have one? They seem to be laboring under an impression, that this is a mere question between themselves and the administration; an unimportant question of ins and outs. The question is certainly of a very different description. It is a question between this nation and foreign nations. It is a question involving our national existence and independence, and the dearest rights of the people.

Let me tell these gentlemen, sir, that the people have a right to demand a substitute from them, if they have one; not merely a vague insinuation to fill up a chasm in a defective argument, but a written proposition, reduced to form, presented for serious consideration; that every word may be strictly examined, and all its bearings seen: then, sir, we should be in a state of preparation to make a choice between such substitute and the measures of the administration.

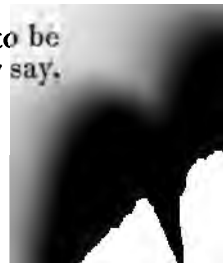
Besides, sir, if this obligation were disregarded, every rule of criticism, every principle of common sense, would require a substitute. If you criticise upon a sentence in writing, the criticism is incomplete until you show a better. In law pleadings, if you object to a plea, as defective, you are bound to show a better. And certainly, sir, the magnitude of the ques-

tion does not lessen the obligation imposed by the ordinary rules of common sense. Again, sir, I could hardly have supposed, that gentlemen of such lofty pretensions to wisdom and talents, would have contented themselves with the humble office of finding fault, without furnishing the proper correction. This inactive conduct, this doing nothing for the people, in these dangerous and critical times, can furnish but a poor claim to the people's gratitude and applause.

But, sir, I will consider the gentleman's substitute, even with the glimmering views of it which he has presented. His substitute is an armed commerce. Would he extend it to acts of reprisal? If so, it is immediate war. Would he stop short of that? It would still be war; but of a more inefficient kind. If our vessels are to arm, I presume their arms are to be used in self-defence; they would be used against both the belligerents. In the present temper of Great Britain, the first gun, fired in a spirit of hostility, even with a blank cartridge, or if it were a popgun, would be instant war. It would be the signal to her navy to seize upon the whole of our commerce, which would be spread upon the ocean the moment of raising the embargo. The gentleman's substitute, I therefore believe to be war, and war of the most inefficient kind. A repeal of the embargo, without a substitute, is submission. Submission to what? To colonization, to taxation, to tribute.

That this is the true character of the British orders and acts of parliament, we not only know from the measures themselves, but we know it was so understood in the British parliament, at the time of their adoption. As an evidence of this fact, let me call your most serious attention, sir, to some of the observations made in parliament, at the time of their adoption, particularly the observations of lord Grenville, in the house of lords.

His lordship said, "as to the duties proposed to be levied under these orders of council, he should only say,



that when the peace of 1782 took place, he never thought that he should have lived, or that the British parliament should have lived to see the day when a proposition should be made to tax America!" And when a similar suggestion was made in the house of commons, what was Mr. Canning's reply? Did he deny the object? No, sir: but begged the gentlemen in the opposition not to tell the secret to the Americans! Hush, gentlemen, was, in substance, his reply. Thus adding indignity and insult to the arrogant pretension. Upon this part of the subject, I shall make no comment! It is impossible to improve the eloquence of this parliamentary language! It must strike deep into the heart of every true American!

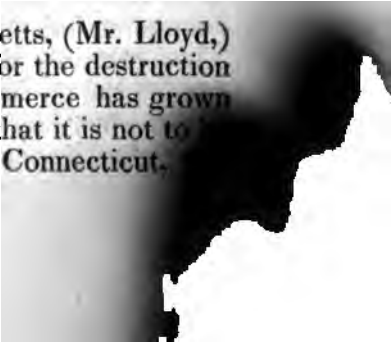
The gentleman from Connecticut, (Mr. Hillhouse,) says, no tribute will be paid, because there will be no inducement to pay it. France will not receive vessels into her ports, which have submitted to such a disgrace. It is admitted that the tribute is imposed: and to avoid the payment of it, we are to look to France: to give up our national character and our national honor to the safe keeping of the French emperor. [The gentleman rose to explain. He protested against making any such inference.] This was admitted. He only stated the facts, and I supplied the inference. The inference from the facts I deem irresistible. I despise, sir, this miserable subterfuge. Let us act like a nation of freemen. Let us be the conservators of our own honor and character. We should be the gainers by it upon the most economical calculation, in pounds, shillings and pence. Our national character is now worth more than the delusive gains held out by this miserable commerce, and would sell for more in every market: submit to this disgraceful tribute, it would not be worth a cent, and would not sell for it in any market.

The gentleman from Connecticut, (Mr. Hillhouse,) says, that the embargo is submission to the mandates of both France and Great Britain. and therefore dis-

honorable. He makes this statement. France says, you shall not trade with Great Britain; Great Britain says, you shall not trade with France; and we say, we will not trade with either, and, therefore, gratify both. The fallacy of this argument consists in the misstatement. France says, you may trade with me, and I am anxious you should do so, but you shall not trade with Great Britain; we say, we will not trade with you, nor with Great Britain. Now, sir, is this yielding to the mandate, or gratifying the wish of France? Certainly not. Great Britain uses the same language, and meets with the same reply. Now I contend, that we have neither yielded submission, nor gratified the wish of either; but have resisted the wishes and mandates of both; and I have no doubt that both are astonished at the honorable and dignified attitude we have assumed and hitherto persisted in.

But, sir, the gentleman intimates, that the government of the United States, has suspended a rod over the head of Great Britain, and asks, whether any American would negotiate with a rod suspended over his head? Let me ask in turn, sir, if the gentleman's proposition, is not submission; not indeed, while the rod is suspended over our heads; but while it is applied, with the most unrelenting severity, to our backs? I was really hurt, sir, to see that any gentleman could make an observation which would bear the most distant tint of an apology for Great Britain; and I cannot conceive how any gentleman can reconcile it to himself, when he reflects upon the many outrages committed by Great Britain against the United States, before even any attempt was made to do ourselves justice—and that these outrages were increased, in proportion to our patience under them.

The gentleman from Massachusetts, (Mr. Lloyd,) expresses his fears of some design for the destruction of commerce. He tells us, our commerce has grown to an enormous size, and warns us, that it is not to be trifled with. The gentleman from Connecticut,



tells us, that the avowed, was not the real object of the embargo laws, and that he so prophesied at the time of passing them; that their real object was to encourage manufactures, at the expense of commerce. This charge of insincerity is a serious one. It is of a nature to impose a restraint upon the feelings, against making the merited reply. It has excited my surprise more than any thing I ever heard fall from that gentleman; and the only apology, I can find for it, is, that he unfortunately prophesied it. It is a painful effort of the mind to admit ourselves false prophets. By this time, it is impossible, but the gentleman must be convinced, that this was a false prophecy. He reminds me of two lines in Hudibras:

“ A man convinc'd against his will,
Is of the same opinion still.”

The gentleman must be convinced, but retains the same opinion. Sir, whether it be a suspicion, or a jealousy, or whatever delusion the gentleman is laboring under, I peremptorily deny the existence of the fact he has insinuated. How has it happened, that the commerce of the United States has become so enormous, but from the fostering and protecting influence of the federal government? What act of hostility against commerce, has ever been shown by the government? I challenge the gentleman to name one, or a single act from the southern members unfavorable to our commercial prosperity. On the other hand, have we not always concurred in the *stimuli* given to commerce by discriminating duties, both on tonnage and merchandize, by the drawback system, and many other acts not material now to mention? It has been from these causes, added to the enterprize of our people, that commerce has arrived to such a pitch of prosperity. They certainly do not warrant the charge brought against the government.

But what has excited my surprise, more than any thing else, respecting this suggestion, is, that the de-

lusion upon the gentleman's mind should be so strong, as to banish his recollection of the local interests of the different states in the union. He seems to suppose, that the southern are manufacturing states. This is not the fact. The fact is, that the commercial are, also, the manufacturing states. The southern states are agricultural and commercial, not manufacturing, except in the household way; and that is not the species of manufacturing that has excited the gentleman's alarm. The peculiar organization of society in the southern states, will, for a long time, forbid large establishments of domestic manufactures. This is the kind which gives the gentleman so much alarm; and, in this kind, the southern states have no local interests whatever. They have, however, an essential interest in commerce, although, generally, the merchants carrying it on, may not reside within them. The agriculturists know, that a prosperous commerce is essential to good prices; and, therefore, they have always contributed to its protection and prosperity. In this state of facts, the gentleman may find a perfect security against his extravagant and unfounded jealousies. But the gentleman is alarmed because he has discovered, in the President's replies to sundry addresses from the manufacturers, expressions of satisfaction at their prosperity and improvement in the manufacturing system. But the President has nowhere expressed an intimation, or a wish, that this improvement or prosperity, should be encouraged and promoted at the expense of commerce. And if he were to indulge so extraordinary an inclination, he could not expect to get a vote south of Potomac, in favor of the system. Suppose the merchants had addressed the President, in the days of their prosperity, would he not have expressed his satisfaction at the circumstance? And would such expression have been just ground, or any ground of alarm and jealousy to the manufacturer? Certainly not, sir. Every patriot must rejoice at the prosperity of each, and every class of citizens. In-

deed, sir, did not the gentleman himself, in the course of his observations, with a laudable animation, express his high satisfaction at the doings of his own legislature giving encouragement to colonel Humphries, in his attempts at introducing manufactures into the state of Connecticut? Proceedings highly honorable, both to the legislature and colonel Humphries; and which I have also seen with great satisfaction. But, sir, would it be correct to infer from this circumstance, that commerce is to be assailed and prostrated? Such an inference would be as idle and absurd in this case, as it is in relation to the views of the general government. Indeed, sir, I concur perfectly with the gentleman in the opinions he has expressed upon the manufacturing system, in relation to the commercial. I have taken more pains in repelling this extraordinary jealousy or suspicion, in the hope, that, in correcting the public sentiment in this respect, it would, at the same time, dissipate a great portion of the objections to the embargo laws, which seem to me, at this time, to be imperiously demanded by the extraordinary crisis of our foreign relations.

I am now approaching a part of this subject, Mr. President, which fills me with regret. I know its delicacy, sir, and deeply regret the necessity which impels the examination of it. It is, however, rendered indispensable, perhaps, by exterior events; but certainly by observations made in the course of this debate. I allude, sir, to the execution of the embargo laws; or, rather, sir, to the suggested incapacity of the government to enforce their observance. The gentleman from Connecticut, (Mr. Hillhouse,) tells us directly, that the government has not power to enforce the execution of these laws. The gentleman from Massachusetts, (Mr. Lloyd,) even points out the mode of resistance. He tells us they may be resisted, first, by town meetings, then by petitions, then by legislative resolutions, and, finally, by insurrections and rebellion.

[Mr. Lloyd rose to explain. He said, "he did not say that this would be the course of events. He only

stated them, abstractly, as probable results from those laws.”]

The gentleman is correct in his statement. I mean to be understood, as stating his observations in that way. It cannot escape observation, however, Mr. President, that this is the practical process now going on in the state, the gentleman has the honor to represent.

It is submitted to the patriotism and good sense of those gentlemen to determine, whether mentioning these circumstances, even in that way, may not have some tendency to produce effects, which must be so much deprecated by all; and permit me to hope, sir, by none more than by those gentlemen: and whether, sir, they are not calculated to keep up the delusions in foreign nations, which, I believe in God, to be the principal causes of our present embarrassments. These circumstances were the less to be expected from gentlemen, who, a few years ago, arrogated to themselves the exclusive appellation of lovers of order and good government, whilst their political opponents were denounced as anarchists and disorganizers, and not even possessing virtue and honesty enough to be trusted with the public treasury. This, sir, was an imposing appellation; and as long as its sincerity was confided in, it preserved these gentlemen in the dominion of the United States.

It was hardly to have been expected, that these gentlemen would now be found the first to sound the alarm in favor of anarchy and confusion; nor was it to have been expected, sir, that the eastern states, which were the first to press the constitution upon us, and which have reaped a golden harvest from its operations, should be the first to wish to absolve themselves from its sacred obligation.

But, Mr. President, I believe this government does possess power sufficient to enforce the embargo laws. The real character of our government seems to be entirely misunderstood by foreigners, and not fully ap-



preciated by some of our own citizens. It has all the strength of execution, with the most despotic governments upon earth. It is aided too, by the knowledge of every citizen ; that when its will is pronounced, it is the fair expression of the will of the majority. The checks of this government are exclusively upon its deliberations, not upon its powers of execution. So far from it, that the constitution has expressly provided, that the government should possess all means necessary and proper for executing its specified powers. There is no limitation, whatever, upon the means for executing the general will, when fairly and deliberately pronounced. Nothing could be more absurd than to suppose, that after so many checks had been imposed upon deliberation in pronouncing the public will, after that will was thus pronounced, that any means, whatever, for its execution should be withheld.

Again, sir, the fundamental principle of our government is, that the majority shall govern : the principle is known and respected by every citizen, and by none more than the people of Massachusetts. They are taught to respect it from the cradle to manhood : first in their town-meetings, then in their legislature, and finally in the general government. They know too well the fatal consequences of resisting it. I have perfect confidence, therefore, in the people of Massachusetts ; and if their electioneering leaders and partizans, should unfortunately stimulate some of them into insurrection, I have no doubt but that the militia of that state, when lawfully called on, will obey the call, and do their duty. Such a movement would share the fate of all similar attempts, which have preceded it ; and its only consequences would be, that its authors, as they would be the first to merit the fate, so they would become the first victims of it. But, sir, I have but little apprehension from these threats of insurrection and rebellion, for other reasons.

The peculiar interests of the people of Massachusetts, forbid the attempt. A few leaders may, per-


haps, postpone their interests to their love of power. But few, however, could enjoy the power under any new order of things, and the people at large would soon see, that their interests were sacrificed to the indulgence of this infatuated ambition of the few.

Let this subject, Mr. President, be a little further examined in reference to the local interests of the eastern states, as members of this union. Potomac may be considered as the boundary line between the commercial and agricultural states.

When our first difficulties with the belligerents occurred, it respected merely a commercial right. What was the conduct of the merchants, and commercial states upon the subject? You have heard, sir, their memorials read, calling upon the government, in a voice too loud to be suppressed, to protect them in their commercial rights; the call was obeyed. As I think this part of the subject ought to be well understood, I beg the indulgence of the senate to read their own proceedings thereupon.

[Mr. Giles here read the proceedings in the senate upon the memorials mentioned above; from which it appeared, that a resolution passed the senate, requesting the President of the United States, to demand of Great Britain restoration of captured property, and indemnification for the losses of American citizens. He then proceeded.]

At this time, the question involved only a commercial right. What was the conduct of the merchants then? They came forward and pledged their lives and fortunes to support the government in any measures for its protection. The question is now changed. To the original question, is added a question of national sovereignty and independence. What is now the conduct of these same merchants? They tell you, sir, to tread back your steps, give up the contest and disgrace your country. These merchants too, threaten you with insurrection and rebellion, unless you yield implicit obedience to their mandates.



Again, sir, I have little apprehension from these threats, for the following reasons: first, many of the individuals, engaged in these excitements, I am told, are gentlemen of property and families. They are, therefore, now in the enjoyment of every political and domestic blessing; their infatuated passions to the contrary notwithstanding. I think persons of this description will pause, before they hazard all these blessings; and a moment's impartial reflection, will be sufficient to check their career. In the next place, there are many local advantages accruing to the people of the eastern states from the operation of the general government. They consist, principally, of the following, although there are others: first, the protection, afforded to their carrying trade, by discriminating duties, both on tonnage and merchandize: second, protection and facility afforded to the coasting trade: third, protection to their fisheries by duties on foreign fish: fourth, affording a good market for their surplus manufactures and other articles: fifth, payment of the public debt at par, which was bought up at very low rates: sixth, as a result from all these advantages, the protection of their population on the sea-board, by lessening the inducements to emigration.


Permit me, sir, to remind the gentleman from Massachusetts, (Mr. Lloyd,) that these advantages are not to be trifled with.

But, sir, I have heard it intimated, that these advantages could be compensated by a connexion with Great Britain. Indulge me, sir, with an examination of this idea. A connexion between New England and Old England, could only be for the benefit of the latter. They are essentially rivals in every occupation: first, in navigation; second, in exports. The exports of New England are principally fish and beef. It would be a great object with Old England, utterly to destroy the New England fish market; and the Irish beef would come into an advantageous competition with the export of that article.

These are permanent points of competition, unalterably fixed in the nature of things; they cannot be altered, nor destroyed by any sudden ebullition of passion, nor by any connexion resulting therefrom.

Again, sir, what would be the effect of such a connexion, upon the rest of the United States. In that case, the discriminating duties, now in favor of the New England states, would be turned against them, and would probably be given to the middle states; and thus New England would be effectually excluded from carrying the bulky and heavy productions of the southern states. Discrimination might even be made in favor of British ships. It is a matter of no consequence to the agriculturist, whether his produce is carried to market in a New England or Old England ship. The only interest, he has in the transaction, is the price of his produce; and that could always be driven to its highest point by the competition of British tonnage and British capital alone, without taking into the estimate the tonnage and capital of the middle states. The people of the southern states are perfectly sensible of the local advantages their eastern brethren enjoy from the operation of the general government. But they envy them not; they rejoice in their prosperity; and the southern people are pleased with the recollection, that they contribute to this prosperity; they find, in return, their compensation in the general safety and protection. I do not mean safety and protection against any internal movements; upon that point I would agree with our eastern brethren upon a reciprocal absolution from all obligation; I mean safety and protection against foreign aggression. Under this plain and obvious view of this part of the subject, Mr. President, I should be disposed to think, that our eastern brethren would be the last to desire to absolve themselves from the sacred obligations of the constitution.

In the southern states, we feel no resentments nor jealousies against our eastern friends. There are no



inducements with us to foster and encourage such unpleasant and mischievous feelings. The gentleman from Massachusetts, (Mr. Lloyd,) has ventured to interpose an opinion between Great Britain and France, respecting the character of the quarrel between them. He has ventured to say, sir, that France is fighting for lawless domination; whilst Great Britain is fighting for her *natale solum*; for her national existence. Sir, in my opinion, it must be inauspicious to the interests of the people of the United States, when their rulers not only feel, but express sympathies in favor of one of the belligerent powers; and surely, sir, the gentleman must feel no small sympathy for one of the belligerents, if he believes the character of the quarrel to be such as he has described it.

In my judgment, sir, the United States have nothing to do with the character of the quarrel of the belligerents; but I differ entirely with the gentleman on this point. I believe the character of the quarrel is precisely the same on both sides; they are both fighting for lawless domination; and I believe, that Great Britain has full as much chance of conquering France, as France has of conquering Great Britain. The only difference between them consists in the difference in the objects of their lawless domination. France claims dominion on the land; Great Britain on the water; they are both equally hostile to us.

The difference to us consists only in the different degrees of force they can bring to bear upon us; in this respect Great Britain does us most injury. We are, thank God, remote from the influence of French power; but the power of Great Britain extends to our shores. France, when she can, seizes and burns our vessels; Great Britain, having more power on the ocean, seizes and confiscates them. The only limit of their hostility is the limit of their power. Both are equally the objects of our just resistance and punishment, if we possessed the power.

I rejoice, that I have heard no apologist for France

on this floor, nor any where else. I feel, sir, a condescension in introducing, for the purpose of denying, the idle and ridiculous tale of French influence, which has, so disrespectfully and disgracefully to our country, been circulated by newspapers. Sir, this idle and ridiculous tale of French influence, I have strong reasons to believe, was originally suggested by British influence. The tale was probably invented by the British cabinet about the same time of the invention of the tale respecting the secret article in the treaty of Tilsit, that the Danes had agreed to give up their fleet to the French emperor to facilitate his invasion of Great Britain. This tale I believe lord Hutchinson has since pronounced, in the British parliament, to be a falsehood. About the same period, this same energetic British cabinet probably determined upon the destruction of American commerce, although the orders for that purpose were not actually issued for several months afterwards. Some tale was thought necessary for the justification of the act, and the suggestion of French influence operating upon our councils was probably the one suggested.

I have heard it said, and believe it to be true, that the governor of Nova Scotia made the suggestion in a letter, addressed to certain British partizans in Boston. It is hardly to be presumed, that he would have taken upon himself the responsibility of such a suggestion without the authority of the cabinet. I am inclined to think, that this fact could be proved in a court of justice. Perhaps there may be gentlemen here from Boston, who could give us more particular information upon this subject. I feel, sir, a condescension in touching upon this subject; I wish to see all extraneous influence utterly banished from the country; and the only operating influence—American influence.

I have, now, sir, gone through this unpleasant, and, I fear, unprofitable discussion, respecting the character of measures heretofore adopted by the government: the only hope I have from it is, that it may put us into

a better temper for deliberating on the measures now proper to be adopted. Let me, then, Mr. President, call the attention of the senate, to the actual situation of the United States at this time.

The United States are now left alone to protect neutral principles against the belligerent encroachments of a warring world. In all former wars, the belligerent encroachments have been proportioned to the influence of the powers at war, compared to the influence of those remaining at peace; but I believe history presents no example of the warring powers at any former time putting at defiance all neutral rights, all public law. It remained for the present times to witness this unexampled aggression; and it remained for the United States alone to bear the shock. This state of things imposes on them a great, a sacred obligation: the obligation of protecting neutral principles. Principles which lessen the inducements to war, and mitigate its rigor. Principles highly interesting to mankind; not only to the present but to future generations, and, in a peculiar manner, to the people of the United States. This arises from their remote situation from the great contending nations of Europe. Hitherto, sir, the talents displayed in defining, and the magnanimity in protecting these principles, have obtained for the United States, the respect and sympathy of an astonished world. And shall we, sir, at the moment of an extraordinary pressure, basely abandon them, without striking a blow? Forbid it interest! Forbid it honor! Forbid it American gallantry! But, sir, some gentlemen seem not sufficiently impressed with the hostile character of the belligerent aggressions. With respect to those of France, there is but one opinion. They amount to hostility itself. But, sir, to my astonishment, the acts of Great Britain seem not to have made the same strong impression on the minds of some gentlemen. Let me then inquire, sir, into the real character of acts, which can, by some gentlemen, be palliated or excused?

They are acts amounting to colonization and taxation; to the exercise of the national sovereignty of the United States. Great Britain has even gone so far, as to exercise an act of sovereignty over the people of the United States, which they would not entrust to Congress; but retained to themselves, in their highest sovereign capacity.

The British orders of council, now sanctioned by an act of parliament, direct all vessels, laden with the produce of the United States, destined to any of the ports of the enemies of Great Britain, to call at a British port, and then to pay an enormous transit duty, and accept a license for the further prosecution of the voyage; and upon refusal, they are forced to do so by British armed ships. This is literally and precisely the introduction of the old and long established colonial principle of coercing all the commerce of the colony to the ports of the mother country, there to pay a transit duty for their protection by the mother country. In the colonial state, the mandate of the mother country was sufficient to effect this object. Now the same object is effected by an armed force. This is the only real difference in the two cases. But, sir, this is not all; Great Britain has attempted, by an act of parliament, to exercise an act of sovereignty over the United States, solemnly given by the people to their Congress. Amongst the powers given to Congress, I find these words, "Congress shall have power to regulate commerce with foreign nations," &c. Now, sir, permit me to read an extract from an act of parliament, and see whether it does, not only impose a tax upon American productions, but also exercise this act of national sovereignty, delegated by the people to Congress.

"And whereas, it is expedient and necessary, in order effectually to accomplish the object of such orders, that duties of customs should be granted upon certain goods exported from Great Britain; we, your majesty's most dutiful and loyal subjects. the commons of the

united kingdom, in parliament assembled, do most humbly beseech your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords, spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, there shall be raised, levied, collected and paid unto his majesty, his heirs and successors, upon all goods, wares and merchandize, enumerated or described in the tables, (A.) (B.) and (C.) annexed to this act, exported from Great Britain, the several duties and customs, as the same are respectively described and set forth in figures in said tables."

In those tables, marked A. B. C. are to be found productions of the United States. It has been said, that Great Britain may lay an export duty upon any goods within her ports. That is readily admitted; it being a mere municipal regulation. But Great Britain has no right to compel our ships to carry our productions into her ports, for the purpose of imposing duties thereon; and this is the act regulating our commerce, of which I complain.

Again, sir, Great Britain has attempted, by this act of parliament, to lay an export duty upon the productions of the United States—a power not even entrusted to the discretion of Congress. I find in the constitution these words: "no tax or duty shall be laid on articles exported from any state." Here, then, is an express prohibition to Congress against laying a duty on any articles exported from any state; yet Great Britain has attempted, by an act of parliament, to lay an export duty on cotton exported from one of the United States; an authority which can only be exercised by the people, in their highest sovereign capacity. It is true, sir, that Mr. Canning has offered to commute this duty into an entire prohibition of the article, as an export from Great Britain. This, sir, was only adding insult to injury. and showed. that Mr. Canning possessed

very little knowledge of the human character, if he expected to sooth the feelings, by insulting the understanding.

I regret, that so much respect was shown to this proposition, as to forward it to our government. It would have been more agreeable to me, if the American minister had thrown the proposition back upon Mr. Canning.

It is true, Mr. President, that the export duty is to be collected in London, and not in Charleston. But, sir, it is not the better in principle on that account; and it is worse in practice. A vessel sailing from Charleston, is to be forced into London, for the purpose of paying this tribute. Better would it be to collect it in Charleston; because the circuitry of the voyage would be saved, and many other vexations and expenses avoided, which are now incurred by being forced into London, to make the payment; and if this measure were to be submitted to, I should not be at all surprised to see his most gracious majesty, in the spirit of a mitigated retaliation, send out his collectors to the ports of the United States, for the accommodation of our merchants. In that case, I presume, we should all admit it to be a duty imposed upon an article exported from a particular state. Are we, sir, not only basely to surrender to Great Britain our rights, entrusted to us by the people, but, treacherously to them, to surrender rights reserved to themselves, in their highest sovereign capacity? And in a case like this, sir, can it be necessary to resort to argument, to rouse the indignant feelings of the American people?

Mr. President, the eyes of the world are now turned upon us; if we submit to these indignities and aggressions, Great Britain herself would despise us; she would consider us as an outcast amongst nations; she would not own us for her offspring; France would despise us; all the world would despise us; and what is infinitely worse, we should be compelled to despise ourselves! If we resist, we shall command the respect

of our enemies, the sympathies of the world, and the noble approbation of our own consciences.

Mr. President, our fate is in our own hands; let us have union, and we have nothing to fear. So highly do I prize union, at this awful moment, that I would prefer any one measure of resistance, with union, to any measure of resistance, with division. Let us then, sir, banish all personal feelings; let us present to our enemies the formidable front of an indissoluble band of brothers: nothing else is necessary to our success. Mr. President, unequal as the contest may seem, favored as we are, by our situation, and under the blessing of a beneficent Providence, who has never lost sight of these United States in times of difficulty and trial, I have the most perfect confidence, that if we prove true to ourselves, we shall triumph over our enemies. Deeply impressed with these considerations, I am prepared to give to the resolutions a flat and decided negative.

INAUGURAL ADDRESS
OF
JAMES MADISON,
PRESIDENT OF THE UNITED STATES,
DELIVERED MARCH 4, 1809.



UNWILLING to depart from examples of the most revered authority, I avail myself of the occasion, now presented, to express the profound impression made on me by the call of my country to the station, to the duties of which I am about to pledge myself, by the most solemn of sanctions. So distinguished a mark of confidence, proceeding from the deliberate and tranquil suffrage of a free and virtuous nation, would, under any circumstances, have commanded my gratitude and devotion, as well as filled me with an awful sense of the trust to be assumed. Under the various circumstances which give peculiar solemnity to the existing period, I feel, that both the honor and the responsibility, allotted to me, are inexpressibly enhanced.

The present situation of the world is indeed without a parallel; and that of our country full of difficulties. The pressure of these two is the more severely felt, because they have fallen upon us at a moment, when national prosperity being at a height not before attained, the contrast resulting from this change has been rendered the more striking. Under the benign influence of our republican institutions, and the maintenance of peace with all nations, whilst so many of them were engaged in bloody and wasteful wars, the fruits of a just policy were enjoyed in an unrivalled growth of our faculties and resources. Proofs of this were seen in the improvements of agriculture; in the

successful enterprises of commerce; in the progress of manufactures and useful arts; in the increase of the public revenue and the use, made of it in reducing the public debt; and in the valuable works and establishments every where multiplying over the face of our land.

It is a precious reflection, that the transition from this prosperous condition of our country to the scene, which has for some time been distressing us, is not chargeable on any unwarrantable views, nor, as I trust, on any involuntary errors in the public councils. Indulging no passions which trespass on the rights or the repose of other nations, it has been the true glory of the United States to cultivate peace, by observing justice, and to entitle themselves to the respect of the nations at war by fulfilling their neutral obligations with the most scrupulous impartiality. If there be candor in the world, the truth of these assertions will not be questioned. Posterity at least will do justice to them.

This unexceptionable course could not avail against the injustice and violence of the belligerent powers. In their rage against each other, or impelled by more direct motives, principles of retaliation have been introduced, equally contrary to universal reason and acknowledged law. How long their arbitrary edicts will be continued in spite of the demonstrations, that not even a pretext for them has been given by the United States, and of the fair and liberal attempts to induce a revocation of them, cannot be anticipated. Assuring myself, that under every vicissitude, the determined spirit and united councils of the nation will be safeguards to its honor, and its essential interests, I repair to the post assigned me with no other discouragement than what springs from my own inadequacy to its high duties. If I do not sink under the weight of this deep conviction, it is because I find some support in a consciousness of the purposes, and a confidence in the principles which I bring with me into this arduous service.

To cherish peace and friendly intercourse with all nations having correspondent dispositions; to maintain sincere neutrality towards belligerent nations; to prefer, in all cases, amicable discussions and reasonable accommodation of differences, to a decision of them by an appeal to arms; to exclude foreign intrigues and foreign partialities, so degrading to all countries and so baneful to free ones; to foster a spirit of independence, too just to invade the rights of others, too proud to surrender our own, too liberal to indulge unworthy prejudices ourselves, and too elevated not to look down upon them in others; to hold the union of the states as the basis of their peace and happiness; to support the constitution, which is the cement of the union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the states and to the people, as equally incorporated with and essential to the success of the general system; to avoid the slightest interference with the rights of conscience or the functions of religion, so wisely exempted from civil jurisdiction; to preserve, in their full energy, the other salutary provisions in behalf of private and personal rights, and of the freedom of the press; to observe economy in public expenditures; to liberate the public resources by an honorable discharge of the public debts; to keep within the requisite limits a standing military force, always remembering, that an armed and trained militia is the firmest bulwark of republics, that without standing armies their liberty can never be in danger, nor, with large ones, safe; to promote, by authorized means, improvements friendly to agriculture, to manufactures, and to external, as well as internal commerce; to favor, in like manner, the advancement of science and the diffusion of information, as the best aliment to true liberty; to carry on the benevolent plans which have been so meritoriously applied to the conversion of our aboriginal neighbors, from the degradation and wretchedness of savage life, to a participation of the improvements of

which the human mind and manners are susceptible in a civilized state:—as far as sentiments and intentions such as these can aid the fulfilment of my duty, they will be a resource which cannot fail me.

It is my good fortune, moreover, to have the path in which I am to tread, lighted by examples of illustrious services, successfully rendered in the most trying difficulties, by those who have marched before me. Of those of my immediate predecessor, it might least become me here to speak; I may, however, be pardoned for not suppressing the sympathy, with which my heart is full, in the rich reward he enjoys in the benedictions of a beloved country, gratefully bestowed for exalted talents, zealously devoted, through a long career, to the advancement of its highest interest and happiness. But the source to which I look for the aids, which alone can supply my deficiencies, is in the well tried intelligence and virtue of my fellow-citizens, and in the councils of those representing them in the other departments associated in the care of the national interests. In these, my confidence will, under every difficulty, be best placed; next to that, we have all been encouraged to feel in the guardianship and guidance of that Almighty Being, whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising republic, and to whom we are bound to address our devout gratitude for the past, as well as out fervent supplications and best hopes for the future.

SPEECH OF JOSIAH QUINCY.

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES JANUARY 14, 1811.

On the passage of the bill to enable the people of the territory of Orleans, to form a constitution and state government : and for the admission of such state into the union.



MR. SPEAKER,

I ADDRESS you, sir, with an anxiety and distress of mind, with me, wholly unprecedented. The friends of this bill seem to consider it as the exercise of a common power ; as an ordinary affair ; a mere municipal regulation, which they expect to see pass without other questions than those concerning details. But, sir, the principle of this bill materially affects the liberties and rights of the whole people of the United States. To me it appears, that it would justify a revolution in this country ; and that, in no great length of time, may produce it. When I see the zeal and perseverance, with which this bill has been urged along its parliamentary path, when I know the local interests and associated projects, which combine to promote its success, all opposition to it seems manifestly unavailing. I am almost tempted to leave, without a struggle, my country to its fate. But, sir, while there is life, there is hope. So long as the fatal shaft has not yet sped, if heaven so will, the bow may be broken and the vigor of the mischief-meditating arm withered. If there be a man in this House or nation, who cherishes the constitution, under which we are assembled, as the chief stay of his hope, as the light which is destined to gladden his own day, and to soften even the gloom of the grave, by the prospect it sheds over his children, I fall not behind him, in such sentiments. I will yield to no man. in

attachment to this constitution, in veneration for the sages, who laid its foundations in devotion to those principles, which form its cement and constitute its proportions. What then must be my feelings; what ought to be the feelings of a man, cherishing such sentiments, when he sees an act contemplated, which lays ruin at the root of all these hopes? When he sees a principle of action about to be usurped, before the operation of which, the bands of this constitution are no more than flax before the fire, or stubble before the whirlwind. When this bill passes, such an act is done; and such a principle usurped.

Mr. Speaker, there is a great rule of human conduct, which he who honestly observes, cannot err widely from the path of his sought duty. It is, to be very scrupulous concerning the principles you select as the test of your rights and obligations; to be very faithful in noticing the result of their application; and to be very fearless in tracing and exposing their immediate effects and distant consequences. Under the sanction of this rule of conduct, I am compelled to declare *it as my deliberate opinion, that, if this bill passes, the bonds of this union are, virtually, dissolved: that the states, which compose it, are free from their moral obligations, and that as it will be the right of all, so it will be the duty of some to prepare, definitely, for a separation: amicably, if they can, violently, if they must.*

[Mr. Quincy was here called to order by Mr. Poin-dexter, delegate from the Mississippi territory, for the words in italics. After it was decided, upon an appeal to the House, that Mr. Quincy was in order, he proceeded.]

I rejoice, Mr. Speaker, at the result of this appeal. Not from any personal consideration, but from the respect paid to the essential rights of the people, in one of their representatives. When I spoke of the separation of the states, as resulting from the violation of the constitution, contemplated in this bill I spoke of it as a necessity, deeply to be regretted, as re-

sulting from causes so certain and obvious, as to be absolutely inevitable, when the effect of the principle is practically experienced. It is to preserve, to guard the constitution of my country, that I denounce this attempt. I would rouse the attention of gentlemen from the apathy, with which they seem beset. These observations are not made in a corner; there is no low intrigue; no secret machination. I am on the people's own ground; to them I appeal, concerning their own rights, their own liberties, their own intent, in adopting this constitution. The voice I have uttered, at which gentlemen startle with such agitation, is no unfriendly voice. I intended it as a voice of warning. By this people, and by the event, if this bill passes, I am willing to be judged, whether it be not a voice of wisdom.

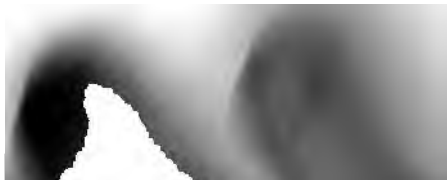
The bill which is now proposed to be passed, has this assumed principle for its basis; that the three branches of this national government, without recurrence to conventions of the people in the states, or to the legislatures of the states, are authorized to admit new partners to a share of the political power, in countries out of the original limits of the United States. Now, this assumed principle, I maintain to be altogether without any sanction in the constitution. I declare it to be a manifest and atrocious usurpation of power; of a nature, dissolving, according to undeniable principles of moral law, the obligations of our national compact; and leading to all the awful consequences, which flow from such a state of things. Concerning this assumed principle, which is the basis of this bill, this is the general position, on which I rest my argument; that if the authority, now proposed to be exercised, be delegated to the three branches of the government by virtue of the constitution, it results either from its general nature, or from its particular provisions. I shall consider distinctly both these sources, in relation to this pretended power.

Touching the general nature of the instrument call-

ed the constitution of the United States, there is no obscurity; it has no fabled descent, like the palladium of ancient Troy, from the heavens. Its origin is not confused by the mists of time, or hidden by the darkness of passed, unexplored ages; it is the fabric of our day. Some now living, had a share in its construction; all of us stood by, and saw the rising of the edifice. There can be no doubt about its nature. It is a political compact. By whom? And about what? The preamble to the instrument will answer these questions.

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution, for the United States of America."

It is, we the people of the United States, for ourselves and our posterity; not for the people of Louisiana; nor for the people of New Orleans or of Canada. None of these enter into the scope of the instrument; it embraces only "the United States of America." Who these are, it may seem strange in this place to inquire. But truly, sir, our imaginations have, of late, been so accustomed to wander after new settlements to the very ends of the earth, that it will not be time ill spent to inquire what this phrase means, and what it includes. These are not terms adopted at hazard; they have reference to a state of things existing anterior to the constitution. When the people of the present United States began to contemplate a severance from their parent state, it was a long time before they fixed definitively the name, by which they would be designated. In 1774, they called themselves "the Colonies and Provinces of North America." In 1775, "the representatives of the United Colonies of North America." In the declaration of independence "the representatives of the United States of America." And finally, in the articles of confederation, the style of



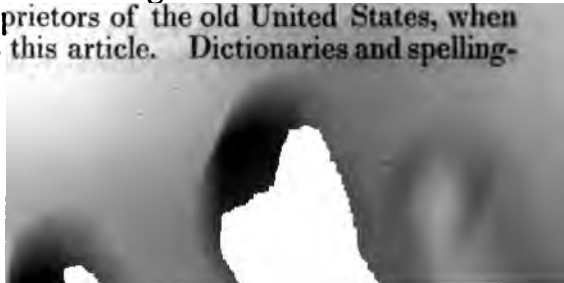
the confederacy is declared to be "the United States of America." It was with reference to the old articles of confederation, and to preserve the identity and established individuality of their character, that the preamble to this constitution, not content, simply, with declaring that it is "we the people of the United States," who enter into this compact, adds that it is for "the United States of America." Concerning the territory contemplated by the people of the United States, in these general terms, there can be no dispute; it is settled by the treaty of peace, and included within the Atlantic Ocean, the St. Croix, the lakes; and more precisely, so far as relates to the frontier, having relation to the present argument, within "a line to be drawn through the middle of the river Mississippi, until it intersect the northernmost part of the thirty-first degree of north latitude, thence within a line drawn due east on this degree of latitude to the river Apalachicola, thence along the middle of this river to its junction with the Flint river, thence strait to the head of the St. Mary's river, and thence down the St Mary's to the Atlantic ocean."

I have been thus particular to draw the minds of gentlemen, distinctly, to the meaning of the terms used in the preamble; to the extent, which "the United States" then included; and to the fact, that neither New Orleans, nor Louisiana, was within the comprehension of the terms of this instrument. It is sufficient for the present branch of my argument to say, that there is nothing, in the general nature of this compact, from which the power, contemplated to be exercised in this bill, results. On the contrary, as the introduction of a new associate in political power implies, necessarily, a new division of power, and consequent diminution of the relative proportion of the former proprietors of it, there can, certainly, be nothing more obvious, than that from the general nature of the instrument no power can result to diminish and give away, to strangers, any proportion of the rights of the

original partners. If such a power exist, it must be found, then, in the particular provisions in the constitution. The question now arising is, in which of these provisions is given the power to admit new states, to be created in territories, beyond the limits of the old United States. If it exist anywhere, it is either in the third section of the fourth article of the constitution, or in the treaty-making power. If it result from neither of these, it is not pretended to be found anywhere else.

That part of the third section of the fourth article, on which the advocates of this bill rely, is the following: "New states may be admitted, by the Congress, into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two, or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress."

I know, Mr. Speaker, that the first clause of this paragraph has been read, with all the superciliousness of a grammarian's triumph—"New states may be admitted, by the Congress, into this union"—accompanied with this most consequential inquiry: "Is not this a new state to be admitted? And is not here an express authority?" I have no doubt this is a full and satisfactory argument to every one, who is content with the mere colors and superficies of things. And if we were now at the bar of some stall-fed justice, the inquiry would insure victory to the maker of it, to the manifest delight of the constables and suitors of his court. But, sir, we are now before the tribunal of the whole American people; reasoning concerning their liberties, their rights, their constitution. These are not to be made the victims of the inevitable obscurity of general terms; nor the sport of verbal criticism. The question is concerning the intent of the American people, the proprietors of the old United States, when they agreed to this article. Dictionaries and spelling-



books are, here, of no authority. Neither Johnson, nor Walker, nor Webster, nor Dilworth, has any voice in this matter. Sir, the question concerns the proportion of power, reserved, by this constitution, to every state in this union. Have the three branches of this government a right, at will, to weaken and outweigh the influence, respectively secured to each state in this compact, by introducing, at pleasure, new partners, situate beyond the old limits of the United States? The question has not relation merely to New Orleans. The great objection is to the principle of the bill. If this principle be admitted, the whole space of Louisiana, greater, it is said, than the entire extent of the old United States, will be a mighty theatre, in which this government assumes the right of exercising this unparalleled power. And it will be; there is no concealment, it is intended to be exercised. Nor will it stop, until the very name and nature of the old partners be overwhelmed by new comers into the confederacy. Sir, the question goes to the very root of the power and influence of the present members of this union. The real intent of this article, is, therefore, an inquiry of most serious import; and is to be settled only by a recurrence to the known history and known relations of this people and their constitution. These, I maintain, support this position, that the terms "new states," in this article, do intend new political sovereignties, to be formed within the original limits of the United States; and do not intend new political sovereignties, with territorial annexations, to be created without the original limits of the United States. I undertake to support both branches of this position to the satisfaction of the people of these United States. As to any expectation of conviction on this floor, I know the nature of the ground; and how hopeless any arguments are, which thwart a concerted course of measures.

I recur, in the first place, to the evidence of history. This furnishes the following leading fact; that before, and at the time of, the adoption of this constitution.

the creation of new political sovereignties, within the limits of the old United States, was contemplated. Among the records of the old Congress, will be found a resolution, passed as long ago as the 10th of October, 1780, contemplating the cession of unappropriated lands to the United States, accompanied by a provision, "that they shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states." Afterwards, on the 7th of July, 1786, the subject of "laying out and forming into states," the country lying northwest of the river Ohio, came under the consideration of the same body; and another resolution was passed, recommending to the legislature of Virginia to revise their act of cession, so as to permit a more eligible division of that portion of territory, derived from her; "which states," it proceeds to declare, "shall hereafter become members of the federal union, and have the same rights of sovereignty, freedom and independence as the original states, in conformity with the resolution of Congress of the 10th of October, 1780." All the territories, to which these resolutions had reference, were, undeniably, within the ancient limits of the United States. Here, then, is a leading fact, that the article, in the constitution, had a condition of things, notorious at the time when it was adopted, upon which it was to act, and to meet the exigency, resulting from which, such an article was requisite. That is to say, new states, within the limits of the old United States, were contemplated at the time when the foundations of the constitution were laid. But we have another authority upon this point, which is, in truth, a contemporaneous exposition of this article of the constitution. I allude to the resolution passed on the 3d of July, 1788, in the words following.

[Here Mr. Quincy read the resolution.]

In this resolution of the old Congress, it is expressly

declared, that the constitution of the United States, having been adopted by nine states, an act of the old Congress could have no effect to make Kentucky a separate member of the union, and that, although they thought it expedient that it should so be admitted, yet that this could only be done under the provisions made in the new constitution. It is impossible to have a more direct contemporaneous evidence that the case, contemplated in this article, was that of territories, within the limits of the old United States; yet the gentleman from North Carolina, (Mr. Macon,) for whose integrity and independence I have very great respect, told us the other day, that "if this article had not territories without the limits of the old United States to act upon, it would be wholly without meaning. Because the ordinance of the old Congress had secured the right to the states within the old United States, and a provision for that object, in the new constitution, was wholly unnecessary." Now, I will appeal to the gentleman's own candor, if the very reverse of the conclusion he draws, is not the true one; after he has considered the following fact—that by this ordinance of the old Congress, it was declared, that the boundaries of the contemplated states, and the terms of their admission, should be, in certain particulars, specified in the ordinance, subject to the control of Congress. Now, as by the new constitution the Old Congress was about to be annihilated, it was absolutely necessary for the very fulfilment of this ordinance, that the new constitution should have this power for the admission of new states, within the ancient limits; so that the ordinance of the old Congress, far from showing the inutility of such a provision for the territories within the ancient limits, expressly proves the reverse; and is an evidence of its necessity to effect the object of the ordinance itself.


I think there can be no more satisfactory evidence adduced, or required, of the first part of the position, that the terms "new states," did intend new political sovereignties within the limits of the old United States.

For it is here shown, that the creation of such states, within the territorial limits fixed by the treaty of 1783, had been contemplated; that the old Congress itself expressly asserts, that the new constitution gave the power for that object; that the nature of the old ordinance required such a power, for the purpose of carrying its provisions into effect, and that it has been, from the time of the adoption of the federal constitution unto this hour, applied exclusively to the admission of states, within the limits of the old United States, and was never attempted to be extended to any other object. Now, having shown a purpose, at the time of the adoption of the constitution of the United States, sufficient to occupy the whole scope of the terms of the article, ought not the evidence to be very strong to satisfy the mind, that the terms really intended something else besides this obvious purpose; that it may be fairly extended to the entire circle of the globe, wherever title can be obtained by purchase or conquest, and that new partners in the political power may be admitted at the mere discretion of this legislature, anywhere that it wills? A principle, thus monstrous, is asserted in this bill.

But I think it may be made satisfactorily to appear, not only that the terms "new states," in this article, did mean political sovereignties to be formed within the original limits of the United States, as has just been shown, but, also negatively, that it did not intend new political sovereignties, with territorial annexations, to be created without those original limits. This appears, first, from the very tenor of the article. All its limitations have respect to the creation of states, within the original limits. Two states shall not be joined; no new state shall be erected within the jurisdiction of any other state, without the consent of the legislatures of the states concerned, as well as of Congress. Now, had foreign territories been contemplated, had the new habits, customs, manners and language of other nations been in the idea of the framers

of this constitution, would not some limitation have been devised, to guard against the abuse of a power, in its nature so enormous, and so obviously, when it occurred, calculated to excite just jealousy among the states, whose relative weight would be so essentially affected by such an infusion, at once, of a mass of foreigners into their councils, and into all the rights of the country? The want of all limitation of such power, would be a strong evidence, were others wanting, that the powers, now about to be exercised, never entered into the imagination of those thoughtful and prescient men, who constructed the fabric. But there is another most powerful argument against the extension of the terms of this article to embrace the right to create states without the original limits of the United States, deducible from the utter silence of all debates at the period of the adoption of the federal constitution, touching the power here proposed to be usurped. If ever there was a time, in which the ingenuity of the greatest men of an age was taxed to find arguments in favor of and against any political measure, it was at the time of the adoption of this constitution. All the faculties of the human mind were, on the one side and the other, put upon their utmost stretch, to find the real and imaginary blessings, or evils, likely to result from the proposed measure. Now I call upon the advocates of this bill to point out, in all the debates of that period, in any one publication, in any one pamphlet, in any one newspaper of those times, a single intimation, by friend or foe to the constitution, approving or censuring it for containing the power, here proposed to be usurped, or a single suggestion, that it might be extended to such an object, as is now proposed. I do not say, that no such suggestion was ever made. But this I will say, that I do not believe there is such an one anywhere to be found. Certain I am, I have never been able to meet the shadow of such a suggestion, and I have made no inconsiderable research upon the point. Such may

exist ; but until it be produced, we have a right to reason as though it had no existence. No, sir, the people of this country, at that day, had no idea of the territorial avidity of their successors. It was, on the contrary, an argument used against the success of the project, that the territory was too extensive for a republican form of government. But, nowadays, there is no limit to our ambitious hopes. We are about to cross the Mississippi. The Missouri and Red River are but roads, on which our imagination travels to new lands and new states, to be raised and admitted, (under the power now first usurped,) into this union, among the undiscovered lands in the west. But it has been suggested, that the convention had Canada in view, in this article, and the gentleman from North Carolina told this House, that a member of the convention, as I understood him, either now, or lately a member of the senate, informed him, that the article had that reference. Sir, I have no doubt the gentleman from North Carolina has had a communication such as he intimates. But, for myself, I have no sort of faith in these convenient recollections, suited to serve a turn, to furnish an apology for a party, or give color to a project. I do not deny, on the contrary, I believe it very probable, that, among the courings of some discursive and craving fancy, such thoughts might be started ; but that is not the question. Was this an avowed object in the convention, when it formed this article ? Did it enter into the conception of the people when its principles were discussed ? Sir, it did not, it could not. The very intention would have been a disgrace both to this people and the convention. What, sir ? Shall it be intimated ; shall it for a moment be admitted, that the noblest and purest band of patriots, this, or any other country, ever could boast, were engaged in machinating means for the dismemberment of the territories of a power, to which they had pledged friendship, and the observance of all the obligations, which grow out of a strict and perfect



amity? The honor of our country forbids and disdains such a suggestion.

But there is an argument stronger, even than all those which have been produced, to be drawn from the nature of the power here proposed to be exercised. Is it possible that such a power, if it had been intended to be given by the people, should be left dependent upon the effect of general expressions, and such too, as were obviously applicable to another subject, to a particular exigency contemplated at the time? Sir, what is this power, we propose now to usurp? Nothing less than a power, changing all the proportions of the weight and influence, possessed by the potent sovereignties composing this union. A stranger is to be introduced to an equal share, without their consent. Upon a principle, pretended to be deduced from the constitution, this government, after this bill passes, may and will multiply foreign partners in power, at its own mere motion; at its irresponsible pleasure; in other words, as local interests, party passions, or ambitious views may suggest. It is a power, that from its nature, never could be delegated; never was delegated; and as it breaks down all the proportions of power, guaranteed by the constitution to the states, upon which their essential security depends, utterly annihilates the moral force of this political conduct. Would this people, so wisely vigilant concerning their rights, have transferred to Congress a power to balance, at its will, the political weight of any one state, much more of all the states, by authorizing it to create new states, at its pleasure, in foreign countries, not pretended to be within the scope of the constitution, or the conception of the people at the time of passing it? This is not so much a question concerning the exercise of sovereignty, as it is who shall be sovereign—whether the proprietors of the good old United States shall manage their own affairs in their own way; or whether they, and their constitution, and their political rights, shall be trampled under foot by for-

cigners, introduced through a breach of the constitution. The proportion of the political weight of each sovereign state, constituting this union, depends upon the number of the states, which have a voice under the compact. This number the constitution permits us to multiply at pleasure, within the limits of the original United States; observing only the expressed limitations in the constitution. But when, in order to increase your power of augmenting this number, you pass the old limits, you are guilty of a violation of the constitution, in a fundamental point; and in one, also, which is totally inconsistent with the intent of the contract, and the safety of the states, which established the association. What is the practical difference to the old partners, whether they hold their liberties at the will of a master, or whether by admitting exterior states on an equal footing with the original states, arbiters are constituted, who, by availing themselves of the contrariety of interests and views, which in such a confederacy necessarily will arise, hold the balance among the parties, which exist and govern us, by throwing themselves into the scale most conformable to their purposes? In both cases there is an effective despotism. But the last is the more galling as we carry the chain, in the name and gait of freemen.

I have thus shown, and whether fairly, I am willing to be judged by the sound discretion of the American people, that the power, proposed to be usurped in this bill, results neither from the general nature, nor the particular provisions, of the federal constitution; and that it is a palpable violation of it in a fundamental point; whence flow all the consequences I have intimated.


But, says the gentleman from Tennessee, (Mr. Rhea,) "these people have been seven years citizens of the United States." I deny it, sir. As citizens of New Orleans, or of Louisiana, they never have been, and by the mode proposed they never will be citizens of the United States. They may be girt upon us for a moment, but no real cement can grow from such an

association. What the real situation of the inhabitants of those foreign countries is, I shall have occasion to show presently. But, says the same gentleman, "If I have a farm, have not I a right to purchase another farm, in my neighborhood, and settle my sons upon it, and in time admit them to a share in the management of my household?" Doubtless, sir. But are these cases parallel? Are the three branches of this government owners of this farm, called the United States? I desire to thank heaven, they are not. I hold my life, liberty and property, and the people of the state, from which I have the honor to be a representative, hold theirs, by a better tenure than any this national government can give. Sir, I know your virtue. And I thank the Great Giver of every good gift, that neither the gentleman from Tennessee, nor his comrades, nor any, nor all the members of this House, nor of the other branch of the legislature, nor the good gentleman, who lives in the palace yonder, nor all combined, can touch these my essential rights, and those of my friends and constituents, except in a limited and prescribed form. No, sir. We hold these by the laws, customs and principles of the commonwealth of Massachusetts. Behind her ample shield, we find refuge, and feel safety. I beg gentlemen not to act upon the principle, that the commonwealth of Massachusetts is their farm.

But, the gentleman adds, "what shall we do, if we do not admit the people of Louisiana into our union? Our children are settling that country." Sir, it is no concern of mine what he does. Because his children have run wild and uncovered into the woods, is that a reason for him to break into my house, or the houses of my friends to filch our children's clothes, in order to cover his children's nakedness? This constitution never was, and never can be, strained to lap over all the wilderness of the west, without essentially affecting both the rights and convenience of its real proprietors. It was never constructed to form a covering for the

inhabitants of the Missouri and the Red River country. And whenever it is attempted to be stretched over them, it will rend asunder. I have done with this part of my argument. It rests upon this fundamental principle, that the proportion of political power, subject only to the internal modifications, permitted by the constitution, is an unalienable, essential, intangible right. When it is touched, the fabric is annihilated: for, on the preservation of these proportions, depend our rights and liberties.

If we recur to the known relations, existing among the states, at the time of the adoption of this constitution, the same conclusion will result. The various interests, habits, manners, prejudices, education, situation and views, which excited jealousies and anxieties, in the breasts of some of our most distinguished citizens, touching the result of the proposed constitution, were potent obstacles to its adoption. The immortal leader of our revolution, in his letter to the President of the old Congress, written as president of the convention, which formed this compact, thus speaks on this subject: "It is at all times difficult to draw, with precision, the line between those rights, which must be surrendered and those, which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several states, as to their situation, extent, habits and particular interests." The debates of that period will show, that the effect of the slave votes, upon the political influence of this part of the country, and the anticipated variation of the weight of power to the west, were subjects of great and just jealousy to some of the best patriots, in the northern and eastern states. Suppose, then, that it had been distinctly foreseen, that, in addition to the effect of this weight, the whole population of a world beyond the Mississippi, was to be brought into this and the other branch of the legislature, to form our laws, control our rights and decide our destiny. Sir, can it be pretended, that the patriots of that day would



for one moment have listened to it? They were not madmen. They had not taken degrees at the hospital of idiocy. They knew the nature of man and the effect of his combinations in political societies. They knew that when the weight of particular sections of a confederacy was greatly unequal, the resulting power would be abused: that it was not in the nature of man to exercise it with moderation. The very extravagance of the intended use, is a conclusive evidence against the possibility of the grant of such a power, as is here proposed. Why, sir, I have already heard of six states, and some say there will be, at no great distance of time, more. I have also heard, that the mouth of the Ohio will be far to the east of the centre of the contemplated empire. If the bill is passed, the principle is recognized. All the rest are mere questions of expediency. It is impossible such a power could be granted. It was not for these men that our fathers fought. It was not for them this constitution was adopted. You have no authority to throw the rights and liberties and property of this people into "hotch-pot" with the wild men on the Missouri, nor with the mixed, though more respectable race of Anglo-Hispano-Gallo Americans, who bask on the sands, in the mouth of the Mississippi. I make no objection to these from their want of moral qualities, or political light. The inhabitants of New Orleans are, I suppose, like those of all other countries, some good, some bad, some indifferent.

As then the power in this bill, proposed to be usurped, is neither to be drawn from the general nature of the instrument, nor from the clause just examined, it follows, that if it exist anywhere, it must result from the treaty-making power. This the gentleman from Tennessee, (Mr. Rhea,) asserts. But the gentleman from North Carolina, (Mr. Macon,) denies, and very justly; for what a monstrous position is this, that the treaty-making power has the competency to change the fundamental relations of the constitution itself!

That a power under the constitution should have the ability to change and annihilate the instrument, from which it derives all its power. And if the treaty-making power can introduce new partners to the political rights of the states, there is no length, however extravagant, or inconsistent with the end, to which it may not be wrested. The present President of the United States, when a member of the Virginia convention for adopting the constitution, expressly declares, that the treaty-making power has limitations; and he states this as one, "that it cannot alienate any essential right." Now, is not here an essential right to be alienated?—the right to that proportion of political power, which the constitution has secured to every state, modified only by such internal increase of states, as the existing limits of the territories, at the time of the adoption of the constitution, permitted. The debates of that period chiefly turned upon the competency of this power to bargain away any of the old states. It was agreed, at that time, that, by this power, old states, within the ancient limits, could not be sold from us. And I maintain, that by it, new states, without the ancient limits, cannot be saddled upon us. It was agreed, at that time, that the treaty-making power "could not cut off a limb." And I maintain, that neither has it the competency to clap a hump upon our shoulders. The fair proportions, devised by the constitution, are, in both cases, marred; and the fate and felicity of the political being, in material particulars, related to the essence of his constitution, affected. It was never pretended by the most enthusiastic advocates for the extent of the treaty-making power, that it exceeded that of the king of Great Britain. Yet I ask, suppose that monarch should make a treaty stipulating that Hanover or Hindostan, should have a right of representation on the floor of parliament; would such a treaty be binding? No, sir, not as I believe, if a house of commons and of lords could be found venal enough to agree to

it. But, although in that country, the three branches of its legislature are called omnipotent, and the people might not deem themselves justified in resistance, yet here there is no apology of this kind. The limits of our power are distinctly marked, and when the three branches of this government usurp upon this constitution, in particulars, vital to the liberties of this people, the deed is at their peril.

I have done with the constitutional argument. Whether I have been able to convince any member of this House, I am ignorant, I had almost said, indifferent. But this I will not say, because I am, indeed, deeply anxious to prevent the passage of this bill. Of this I am certain, however, that, when the dissensions of this day are passed away, when party spirit shall no longer prevent the people of the United States from looking at the principle assumed in it, independent of gross and deceptive attachments and antipathies, the ground, here defended, will be acknowledged as a high constitutional bulwark, and the principles here advanced will be appreciated.

I will add one word, touching the situation of New Orleans. The provision of the treaty of 1803, which stipulates, that it shall be "admitted as soon as possible," does not therefore imply a violation of the constitution. There are ways, in which this may constitutionally be effected, by an amendment of the constitution; or by reference to conventions of the people, in the states. And I do suppose, that, in relation to the objects of the present bill, (the people of New Orleans,) no great difficulty would arise. Considered as an important accommodation to the western states, there would be no violent objection to the measure. But this would not answer all the projects, to which the principle of this bill, when once admitted, leads, and is intended to be applied. The whole extent of Louisiana is to be cut up into independent states; to counterbalance and to paralyze, whatever there is of influence in other quarters of the Union.

Such a power, I am well aware, the people of the states would never grant you. And, therefore, if you get it, the only way is, by the mode adopted in this bill —by usurpation.

The objection here urged is not a new one. I refer with great delicacy to the course pursued by any member of the other branch of the legislature; yet I have it from such authority that I have an entire belief of the fact, that our present minister in Russia, then a member of that body, when the Louisiana treaty was under the consideration of the senate, although he was in favor of the treaty, yet expressed great doubts on the ground of constitutionality, in relation to our control over the destinies of that people, and the manner and the principles, on which they could be admitted into the union. And it does appear, that he made two several motions in that body, having for their object, as avowed, and as gathered from their nature, an alteration in the constitution to enable us to comply with the stipulations of that convention.

I will add only a few words, in relation to the moral and political consequences of usurping this power. I have said that it would be a virtual dissolution of the Union; and gentlemen express great sensibility at the expression. But the true source of terror is not the declaration I have made, but the deed you propose. Is there a moral principle of public law better settled, or more conformable to the plainest suggestions of reason, than that the violation of a contract by one of the parties may be considered as exempting the other from its obligations? Suppose, in private life, thirteen form a partnership, and ten of them undertake to admit a new partner without the concurrence of the other three, would it not be at their option to abandon the partnership, after so palpable an infringement of their rights? How much more, in the political partnership, where the admission of new associates, without previous authority, is so pregnant with obvious dangers and evils! Again; it is settled as a principle of morality,

among writers on public law, that no person can be obliged, beyond his intent, at the time of the contract. Now who believes, who dare assert, that it was the intention of the people, when they adopted this constitution, to assign, eventually, to New Orleans and Louisiana, a portion of their political power; and to invest all the people, those extensive regions might hereafter contain, with an authority over themselves and their descendants? When you throw the weight of Louisiana into the scale, you destroy the political equipoise, contemplated at the time of forming the contract. Can any man venture to affirm, that the people did intend such a comprehension as you now, by construction, give it? Or can it be concealed, that beyond its fair and acknowledged intent, such a compact has no moral force? If gentlemen are so alarmed at the bare mention of the consequences, let them abandon a measure, which, sooner or later, will produce them. How long before the seeds of discontent will ripen, no man can foretell. But, it is the part of wisdom not to multiply or scatter them. Do you suppose the people of the northern and Atlantic states will, or ought to look on with patience and see representatives and senators, from the Red River and Missouri, pouring themselves upon this and the other floor, managing the concerns of a sea-board fifteen hundred miles, at least, from their residence; and having a preponderancy in councils, into which, constitutionally, they could never have been admitted? I have no hesitation upon this point. They neither will see it, nor ought to see it, with content. It is the part of a wise man to foresee danger and to hide himself. This great usurpation, which creeps into this House, under the plausible appearance of giving content to that important point, New Orleans, starts up a gigantic power to control the nation. Upon the actual condition of things, there is, there can be, no need of concealment. It is apparent to the blindest vision. By the course of nature, and conformable to the acknow-

ledged principles of the constitution, the sceptre of power, in this country, is passing towards the north-west. Sir, there is to this no objection. The right belongs to that quarter of the country. Enjoy it: it is yours. Use the powers granted, as you please. But take care, in your haste after effectual dominion, not to overload the scale by heaping it with these new acquisitions. Grasp not too eagerly at your purpose. In your speed after uncontrolled sway, trample not down this constitution. Already the old states sink in the estimation of members, when brought into comparison with these new countries. We have been told, that "New Orleans was the most important point in the union." A place, out of the union, the most important place within it! We have been asked, "what are some of the small states, when compared with the Mississippi territory?" The gentleman from that territory, (Mr. Poindexter,) spoke the other day of the Mississippi, as "of a high road between"—good heavens! between what? Mr. Speaker—why "the eastern and western states!" So that all the northwestern territories, all the countries, once the extreme western boundary of our union, are hereafter to be denominated Eastern States!

[Mr. Poindexter explained. He said, that he had not said that the Mississippi was to be the boundary between the Eastern and Western states. He had merely thrown out a hint, that in erecting new states, it might be a good high-road between the states on its waters. His idea had not extended beyond the new states, on the waters of the Mississippi.]

I make no great point of this matter. The gentleman will find, in the National Intelligencer, the terms to which I refer. There, will be seen, I presume, what he has said, and what he has not said. The argument is not affected by the explanation. New states are intended to be formed beyond the Mississippi. There is no limit to men's imaginations, on this subject, short of California and Columbia river. When

I said that the bill would justify a revolution and would produce it; I spoke of its principle and its practical consequences. To this principle and those consequences, I would call the attention of this House and nation. If it be about to introduce a condition of things, absolutely insupportable, it becomes wise and honest men, to anticipate the evil; and to warn and prepare the people against the event. I have no hesitation on the subject. The extension of this principle to the states, contemplated beyond the Mississippi, cannot, will not, and ought not to be borne. And the sooner the people contemplate the unavoidable result, the better; the more likely that convulsions may be prevented; the more hope that the evils may be palliated or removed.

Mr. Speaker, what is this liberty of which so much is said? Is it to walk about this earth, to breathe this air, and to partake the common blessings of God's providence? The beasts of the field and the birds of the air unite, with us, in such privileges as these. But man boasts a purer and more ethereal temperature. His mind grasps in its view the past and future, as well as the present. We live not for ourselves alone. That, which we call liberty, is that principle, on which the essential security of our political condition depends. It results from the limitations of our political system, prescribed in the constitution. These limitations, so long as they are faithfully observed, maintain order, peace and safety. When they are violated, in essential particulars, all the concurrent spheres of authority rush against each other; and disorder, derangement and convulsion are, sooner or later, the necessary consequences.

With respect to this love of our union, concerning which so much sensibility is expressed, I have no fear about analyzing its nature. There is in it nothing of mystery. It depends upon the qualities of that union, and it results from its effects upon our, and our country's happiness. It is valued for "that sober certainty

of waking bliss," which it enables us to realize. It grows out of the affections; and has not, and cannot be made to have, any thing universal in its nature. Sir, I confess it, the first public love of my heart is the commonwealth of Massachusetts. There is my fire-side; there are the tombs of my ancestors—

" Low lies that land, yet blest with fruitful stores,
Strong are her sons, though rocky are her shores ;
And none, ah ! none, so lovely to my sight,
Of all the lands, which heaven o'erspreads with light."

The love of this union grows out of this attachment to my native soil, and is rooted in it. I cherish it, because it affords the best external hope of her peace, her prosperity, her independence. I oppose this bill from no animosity to the people of New Orleans; but from the deep conviction that it contains a principle, incompatible with the liberties and safety of my country. I have no concealment of my opinion. The bill, if it passes, is a death-blow to the constitution. It may, afterwards, linger; but lingering, its fate will, at no very distant period, be consummated.

SPEECH OF GEORGE POINDEXTER,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, JANUARY 14, 1811,

On the passage of the bill to enable the people of the territory of Orleans, to form a constitution and state government ; and for the admission of such state into the union.



MR. SPEAKER,

It is with extreme reluctance that I claim the indulgence of the House, to participate in the discussion of the subject now under consideration. I should deem it, not only useless, but inexcusable to trespass on your time, and delay the final question on the passage of the bill before you, but for the novel and extraordinary aspect which has been given to the debate by an honorable gentleman from Massachusetts, (Mr. Quincy.) The tendency of the remarks, made by that gentleman, is manifestly hostile to the best interests of the nation, and calculated to excite, so far as their influence extends, a spirit of revolt among the people of the United States. I cannot, therefore, forbear to enter my protest, in the only form* constitutionally provided for the peculiar situation which I occupy on this floor, against the establishment of principles fraught with such disastrous consequences. But, sir, as various objections have been made to the passage of the bill, and as I profess to be friendly to its general objects, I shall endeavor to give some of these objections a concise examination, before I proceed to notice the observations of the gentleman from Massachusetts.

* Mr. Poindexter was a delegate, and consequently could not vote, although he could participate in the debate.—COMPILER.

[Mr. Poindexter here replied to numerous arguments which had been urged against the passage of the bill; after which, he proceeded as follows.]

Permit me, now, sir, to call the attention of the House to the argument of the gentleman from Massachusetts. We are told by that gentleman, that the provisions of this bill are in direct hostility to the constitution, and materially affect the rights and liberties of the whole people of the United States. That the creation of new states or "political sovereignties" without the original limits of the United States, is a usurpation of power not warranted by a sound construction of the constitution. In the consideration of this subject, two questions arise; first, whether the United States can acquire foreign territory, and by what means; and whether the territory so acquired can be admitted into the union as an independent state? By the fourth article of the constitution, Congress are authorized, "to dispose of and make all needful rules and regulations respecting the territory of the United States." This provision contains an express recognition of the right, not only to possess territory, but to dispose of and regulate it in any manner which Congress may think consistent with the general good. If, then, the power to hold territory, and to regulate it without limitation, is expressly given to the general government, the right to acquire it follows as an indispensable attribute of sovereignty. And this opinion is supported by the enumeration of powers given to Congress in the constitution. A nation can extend its territorial limits either by conquest or treaty. If in the prosecution of a just and legitimate war, or by a fair and *bona fide* contract, one nation acquires the possession of territory which originally belonged to another, it becomes incorporated with the domain of the power to whom it is thus transferred, and cannot be distinguished from any other portion of territory over which the sovereign authority of the nation extends.

By the eighth section of the first article of the con-

stitution, the power is given to Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" and by the second section of the second article, the President, by and with the advice and consent of the senate, is vested with power "to make treaties, provided two thirds of the senators present concur." From these grants of power in the constitution, it is manifest that the United States can, without a violation of that instrument, acquire and hold foreign territory. The authority to dispose of and the means of acquiring territory, being exclusively confided to the general government, and prohibited to the states, it would require clear and distinct negative expressions to confine that power within any particular geographical limits. The constitution contains no prohibition of the right to acquire territory, either by war or compact, but the latter alternative has been adopted by this government, whose policy is founded in justice, and whose object is peace.

Having shown that the United States possess, constitutionally, the power and the means of obtaining foreign territory, the only point which remains to be discussed is, whether new states may be created without the ancient limits of the United States. In the investigation of this part of the subject, it will be proper to take a cursory view of the treaty-making power, and of the convention between the United States and France, of the 30th of April, 1803. It is a universal principle in all governments, whether their form be despotic or free, to vest the chief executive magistrate, in some shape or other, with the sole power of entering into pacts, treaties and conventions with foreign nations; and although the concurrence of co-ordinate departments of the government may be necessary to give validity to the act of the executive, in no instance can a treaty be formed without his assent. The national security against the abuse of this power, consists in the solicitude which each feels to make the best bar-

gain for the people over whom his authority extends. In England, says Sir William Blackstone, "it is the king's prerogative to make treaties, leagues and alliances with foreign states and princes. For it is, by the law of nations, essential to the goodness of a league, that it be made by the sovereign power, and then it is binding on the whole community; and in England the sovereign power *quo ad hoc* is vested in the person of the king. Whatever contracts, therefore, he engages in, no other power in the kingdom can legally delay, resist, or annul. And yet, lest this plenitude of authority should be abused to the detriment of the public, the constitution, (as was hinted before,) hath here interposed a check, by the means of parliamentary impeachment. for the punishment of such ministers as from criminal motives advise or conclude any treaty which shall afterwards be judged to derogate from the honor and interest of the nation." But, says the gentleman from Massachusetts, "suppose that monarch should make a treaty, stipulating that Hanover or Hindostan should have a right of representation on the floor of parliament, would such a treaty be binding?" The obvious reply to this far-fetched interrogatory is, that, if these countries formed a part of the British dominions, the necessary statutes to carry such a stipulation into effect would make it obligatory on the British nation, and no power in the kingdom could "legally delay, resist, or annul it." There is nothing in the British constitution to control the treaty-making power of that country, and therefore the king may properly contract for the extension of civil and political rights. The constitution of the United States is more guarded in this particular. The treaty-making power is composed of the President and two thirds of the senators present; and whenever appropriations of money are necessary to carry a treaty into effect, the immediate representatives of the people have a salutary check on the other two branches.

This wise and judicious distribution of power, forms an impenetrable bulwark around the liberties of the American people. If, from accident or design, the President should enter into engagements with a foreign nation incompatible with the general principles or express provisions of the constitution, the interposition of the other departments will afford a seasonable corrective to such a dereliction of duty. It is, however, to be presumed, that in all our transactions with foreign countries, the influence of national attachments will induce the executive councils to promote, as far as possible, the welfare of the United States. It would, indeed, be a novelty in political history, that an individual, who is raised by the voluntary suffrages of his fellow-citizens to the first office in their gift, should prostrate their rights and his power at the feet of a foreign prince. Gratitude, personal respect, love of power, and, in short, every motive which can actuate the human mind, operate to produce a different result. These are the only restrictions which have been thought, by the founders of the constitution, essential to guard against the encroachments of the treaty-making power in this country. The enumeration in the constitution, which defines the powers of the respective departments, was not intended to apply to treaties and conventions entered into with foreign nations. It would have been unreasonable to have attempted a specification of all the cases in which external regulations would, from time to time, become expedient and necessary. No human being could foresee all the contingencies that might occur in the practical operation of the government, which require the interposition of the treaty-making power. I therefore contend, that a treaty, once ratified by each co-ordinate department of the government, becomes the supreme law of the land, and is as binding on this House as an article in the constitution itself. To illustrate this position beyond the reach of contradiction, and to give to reason the aid of an ex-

press provision in the constitution, I beg leave to quote from article sixth, the following words: "This constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. And the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." The distinction, here taken between laws and treaties, cannot be misunderstood; laws are to be made in pursuance of the constitution; treaties "under the authority of the United States." I admit, sir, that an article in a treaty, which would go to contravene an express provision of the constitution, would not be binding; but who is to be the arbiter between the treaty-making power and the constitution? Will you confide this gigantic power to the supreme court of the United States, and give to that tribunal the exposition of all controversies growing out of treaties or conventions with foreign nations? I presume no gentleman will advance a doctrine so absurd and ridiculous. If, then, the other three branches of the general government determine a treaty constitutional, by passing the necessary laws to carry it into effect, it becomes at once the supreme law of the land; and, so far as its stipulations secure personal privileges and the rights of property, they must be fulfilled.

Let us now inquire, what are the obligations which we have contracted in relation to the inhabitants of Louisiana, by the treaty of cession with the French republic. The third article of that treaty stipulates, that "the inhabitants of the ceded territory shall be incorporated into the union of the United States, and admitted, as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights and immunities of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty,

property, and the religion which they profess." And are we sitting here, to deliberate whether we will perform these solemn engagements, which have been entered into by the constituted authorities, and which are presented to us in the imposing attitude of the supreme law of the land? Are not the principles of the constitution in unison with these engagements? Article the fourth, section third; "new states may be admitted by the Congress into this union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the states concerned, as well as of the Congress." Here, then, is a general power to admit new states, and I challenge any gentleman to show, that it is confined to the original territory belonging to the United States. There is no clause of the constitution which contains such a limitation, even by the remotest implication. Such a construction would not only be contrary to the letter, but to the spirit of the article to which I have referred. For if other territory than that which belonged to the United States, at the time of the adoption of the federal constitution, was not intended to be incorporated into the union, why has it been the constant practice of the government to annex Indian territory to the old states, and to form new states of lands purchased from the different tribes of Indians in the United States? They are foreign powers, acknowledged and treated with as such from the commencement of the government; and the objection, urged on this occasion, would apply with equal force against the extinguishment of Indian title. I trust, sir, that enough has been said to satisfy every candid individual of this body, that the territory, which it is the object of this bill to create into a separate commonwealth, was fairly and constitutionally acquired; that we are bound by the sacred obligations of treaty to extend to its inhabitants all the "rights, advantages and immunities of citizens of the United

States," and that there exists no constitutional barrier to a fulfilment of that undertaking on the part of the United States. The most approved writer* on public law, declares, that "he who has made a promise to any one, has conferred upon him a true right to require the thing promised, and that, consequently, not to keep a perfect promise, is to violate the right of another; and is as manifest an injustice as that of depriving a person of his property. And further, as the engagements of a treaty impose, on the one hand, a perfect obligation, they produce, on the other, a perfect right. To violate a treaty, then, is to violate the perfect right of him with whom we have contracted, and this is to do him an injury." I conceive the character of the nation to be deeply involved in the question now before the House. If we refuse to perform the legal, moral and political obligation, which is imposed on us by the treaty of cession, to incorporate the inhabitants of the ceded territory into the union of the United States, and to admit them to the enjoyment of all the rights and privileges of citizens, we shall deserve to be branded with the odious epithet of a faithless nation, we shall merit the censure of the civilized world, and the just resentment of the people, to whom these rights and privileges ought to be extended.

Mr. Speaker, I enter, with lively sensibility, on that portion of the remarks made by the honorable gentleman from Massachusetts, which menace insurrection and a dissolution of the union. Had these sentiments fallen from the gentleman in the ardor of debate, while the imagination was inflamed with an unconquerable zeal to prove the impolicy of the measure under consideration, or had they been offered in the shape of possible results, I should have regarded them only with pity and contempt: but the gentleman declares it to be his "deliberate opinion, that if this bill passes, the bonds of this union are virtually dissolved; that the

* Vattel, 261.

states, which compose it, are free from their moral obligations, and that as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation; amicably if they can, violently if they must." Influenced by a desire to stamp on these expressions their merited disgrace, and to preserve dignity and decorum in our deliberations, I felt it my duty to call the gentleman to order. Perhaps, in doing so, I was actuated more by a sudden impulse of feeling, than by an accurate knowledge of parliamentary proceedings. I am still, however, impressed with a conviction, that these sacred walls—the sanctuary of the liberties of the American people, ought not to be polluted by direct invitations to rebellion against the government of which we are a constituent part; but the liberality and the courtesy of the House have overruled that opinion, and the gentleman was permitted to proceed. Are we then about to commit an act which is to burst asunder the bonds of our political union, and prostrate the glorious fabric which has been reared by the valor of our ancestors? Sir, when I look at the events which led to the acquisition of Louisiana, and the efforts made at that time, by those who opposed the measures of administration, to call forth the national energies for the purpose of securing that important point by conquest, lest it should fall into the hands of a powerful neighbor, and compare them with the declarations now made by the gentleman from Massachusetts, I am filled with astonishment. I cannot believe, that the party, with whom that gentleman is in the habit of acting, will support the visionary theories and frantic anticipations which he has advanced on the present occasion. For the honor of every real American who is ranked with the federal party, I hope that these idle dreams of political insanity will be suffered to vanish without a struggle, before the effulgent sunshine of patriotism.

I should, indeed, rejoice to find, that in this instance, as in the baseless impeachment instituted by the gen-

tleman against the illustrious Jefferson, he should be once more exhibited to a laughing audience, a solitary unit on your journals in favor of principles so abhorrent to every good citizen. But, sir, permit me to analyze the case which it is said will be productive of this great national calamity.

[Mr. Poindexter here gave a sketch of the difficulties which had existed relative to the free navigation of the river Mississippi by the citizens of the United States, and of the manner of their settlement by the purchase of Louisiana. He then proceeded.]

This event, so highly advantageous to the nation, diffused general joy throughout the United States; but the heroes, whose valor would have hurried them into a premature and unjust war to accomplish this end, found no difficulty in expelling from their minds the idea, that this country was "so essential to us as a nation." New Orleans suddenly lost all its charms. Louisiana became a wilderness of swamps and marshes, and the vast extent of territory which we had acquired, was one day to produce the downfall of the republic.

The gentleman from Massachusetts, seems to imagine, that the crisis has arrived when this prediction is to be fulfilled. You are, says he, about to admit a "new partner into the confederacy without the original limits of the United States, which tends to diminish the political power of the original partners, and according to the undeniable principles of moral law, the obligation of our national compact is dissolved." What, sir, does the gentleman mean by political power in the original partners? Have we such a thing as patent power in the United States? Thank God, sir, we have neither counts, dukes nor lords, nor members of the grand legion of honor, nor any other grade of privileged orders in this country, who possess "political power," by lineal or collateral descent, or by purchase. In this government, all power is vested in and flows from the people, and we sit here, not as their

masters, but as their servants, and to that august tribunal are we responsible for the fidelity with which we execute the trust confided to us. Political power, then, being in the great body of the people, it cannot be definitely apportioned among the states, but each state possesses weight proportionate to its numbers. If, for instance, two thirds of the population of Virginia should remove to the Mississippi territory, which they have a perfect right to do, the influence of Virginia in the national councils, in point of representation, would be two thirds less than at present, and it might with equal justice be said, that a state, inferior in political power, at the time the compact was entered into, should remain in that situation *ad infinitum*, as to contend that a number of citizens, residing in a territory belonging to the United States, should not be admitted to the enjoyment of those political rights, to which from their numbers they are entitled. It results from the very nature of our government, that political influence fluctuates in proportion to the augmentation or diminution of population, in the various sections of the country. The addition of fifty thousand inhabitants to the whole people of the United States, increases the political weight of the whole, just in the same ratio that a similar addition to an army would increase its physical strength. If, as the gentleman has alleged, the proportions of political power, in the several states, is an "unalienable, essential, intangible right," it must forever remain the same, like a chartered privilege, let the weight of population rest where it may. Such a principle is inconsistent with the genius of a free government, and incompatible with the sovereign authority of the people.

Mr. Speaker, on all the great questions which have been discussed in this House for the last four years, war with England, and a separation of the eastern states from the union, have been constantly thrown in the way to obstruct the measures of the administration. Why these subjects have gone hand in hand, I

leave gentlemen, who are in the secret, to explain. It ought not to be forgotten that, on a proposition to repeal the embargo, at a time when its effects were severely felt both in Great Britain and her colonies, the gentleman from Massachusetts told us, that the people of New England were prepared for insurrection and revolt, unless that measure of resistance to the aggressing belligerents was relinquished. And contemporaneously with these opinions, uttered on the floor of the House of Representatives, the British minister, resident in the United States, made a confidential communication to his government, in which a dissolution of the union was deemed a probable event, should the commercial embarrassments of this country continue. From whom that minister received his information, no gentleman, acquainted with the history of that transaction, can doubt. He who deliberately wields the "mischief-meditating" hand of civil commotion, will seldom hesitate as to the means which he employs to accomplish a favorite object. The mind, which once resolves on political parricide, can never be restored to a sense of moral virtue and integrity. And wretched, indeed, would be the fate of this country, were its destinies committed to those who openly avow that intention. The notorious conspiracy of Aaron Burr had for its basis the detestable project of dismembering the union. And what, sir, was the fate of that infatuated individual? Exiled from his native country, in which he once held a distinguished place, not only in the administration of its government, but also in the affections of the people; a beggar in Paris, and a fit instrument to be used by foreign courts to bring distress and ruin on the country, from which his crimes have expelled him. And yet that man did not dare to go the lengths which the gentleman from Massachusetts has been permitted to go within these walls. Did Aaron Burr, in all the ramifications of his treasonable projects ever declare to an assembly of citizens, that the states were free from their moral

obligations—"And that as it will be the right of all, so it will be the duty of some to prepare definitely for a separation, peaceably if they can, violently if they must?" No, sir. Had such expressions been established, by the evidence on his trial, I hazard an opinion that it would have produced a very different result. Perhaps, sir, instead of exile, he would have been consigned to a gibbet. For it cannot be concealed that the language of the gentleman from Massachusetts, if accompanied by an overt act, to carry the threat which it contains into execution, would amount to treason, according to its literal and technical definition in the constitution and laws of the United States. The fate of Aaron Burr ought to be a salutary warning against treasonable machinations; and if others, having the same views, do not share a similar fate, it will not be because they do not deserve it. Sir, the gentleman from Massachusetts, unfortunately for himself, has referred to the opinions of the present minister in Russia. Comparisons are, indeed, odious; but on this occasion, the gentleman has invited the contrast. In the memorable discussion on the Louisiana treaty, Mr. Adams said, "I consider the object as of the highest advantage to us; and the gentleman from Kentucky himself, (Mr. Breckenridge,) who has displayed with so much eloquence the immense importance to this union of the possession of the ceded country, cannot carry his ideas on that subject further than I do." And on a subsequent occasion, when called upon to decide the delicate question, whether a member of the senate of the United States should be expelled from that body for treason and misdemeanor, with which he was charged, Mr. Adams, in his able report to the senate on that subject, uses the following strong and perspicuous language:—"If the ingenuity of a demon were tasked to weave into one composition all the great moral and political evils which could be inflicted on the people of these states, it would produce nothing more than a texture of war, dismemberment and depotism." These are

the sentiments and feelings of that distinguished citizen who is now our minister at the court of St. Petersburg. They breathe the spirit of an American who "cherishes the constitution, under which we are assembled, as the chief stay of his hope; as the light which is destined to gladden his own day by the prospect it sheds over his children." Let us examine whether the gentleman from Massachusetts falls "not behind him in such sentiments." The inhabitants of the country which our minister in Russia declared to be of such immense importance to this union are about to be admitted to a participation of those rights which belong to every American citizen, and the country itself incorporated into the United States. Compare, I beseech you, sir, the language of the gentleman from Massachusetts, with that used by the Russian minister. "If this bill passes, (says the gentleman,) it will justify a revolution in this country; the union will be virtually dissolved; civil war will become sanctified as a matter of right in each of the states, if they are not permitted to separate peaceably; political jealousy is inculcated between the eastern and western states; every circumstance which is calculated in the remotest degree to excite discord and divisions, is studiously adverted to. The inhabitants of Louisiana are represented as wild and uncovered, in the woods, and dependent on the eastern states for clothes to cover their nakedness; they are called at one time the wild men of Missouri, and at another, the Anglo-Hispano-Gallo-Americans, who bask on the sands in the mouth of the Mississippi; and to cap the climax, we are alarmed with the apprehension, that six new states are to be formed in the west, which are to swallow up the power of the original partners to the constitution, and control the nation. Are these the suggestions of a mind which "yields to none in its attachments to the constitution?" Sir, they are the ebullitions of political drunkenness, designed to produce internal "war, dismemberment and despotism." I do not think the gentleman from Massachusetts has any

reason to congratulate himself on the reference which he made to the opinions of the Russian minister. On the one hand, we discern nothing but patriotism and union; and on the other, political jealousy, revolution, disunion, and the inseparable associate of these, despotism. But, Mr. Speaker, the people of the eastern states will never give their assent to a dissolution of the union. They are bound to the western country by the inseparable ties of nature and of interest. The hardy and adventurous sons of New England will, in a short time, compose a large proportion of the population on the waters of the Mississippi, and, I undertake to assure the gentleman from Massachusetts, that they will never return to "break into his house, or the houses of his friends, to filch their children's clothes in order to cover their nakedness." In that new and fertile region, the hand of industry is rewarded with a rich return of the comforts of life, which the liberality of its inhabitants distributes with benevolence and hospitality. Besides these natural bonds, which are every day increasing between the eastern and western portions of the United States, there is a reciprocal advantage in the intercourse which is preserved between them. The western country is peculiarly adapted to the pursuits of agriculture, and the river Mississippi is the great highway, through which their bulky articles are conveyed to a suitable and profitable market.

The eastern states have long been, and will long continue to be, the carriers of these surplus products to the sea-port cities of the United States, to the West Indies and to Europe. Is it not, then, the interest of those, who are engaged in the carrying trade, to give encouragement to agriculture? There are mutual benefits in this interchange of labor, which tends to promote the welfare of each section of the union. No collision of interest can ever exist between the growers of hemp, flour, cotton, tobacco and sugar, and the carrier, who finds employment in their transportation to the countries in which they are consumed. If any

advantage could be derived from a separation of these states, it would be found to preponderate in favor of the western division. We should at once become possessed of the public lands, which are said to be a fund, on which the nation may rely for revenue to an incalculable amount. These lands have been acquired at the national expense, and it would, therefore, be unreasonable and unjust, to confer them wholly on the western states. But if the deleterious consequences, which have been predicted by the gentleman from Massachusetts, should be realized, such will be the inevitable effect in relation to the territory belonging to the United States.

Surely, sir, there is patriotism enough, even in the city of Boston, to counteract the deteriorating principles of that gentleman. Let us adhere to the maxims of wisdom, and, by a union of sentiment and action, convince the nations of Europe, that we are too powerful to be conquered, and too happy to be seduced from the allegiance we owe to the government of our choice.

SPEECH OF JOHN RANDOLPH,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, DECEMBER 10, 1811,

On the second resolution reported by the committee of foreign relations ; " That an additional force of ten thousand regular troops, ought to be immediately raised to serve for three years ; and that a bounty in lands ought to be given to encourage enlistment."



MR. SPEAKER,

This is a question, as it has been presented to this House, of peace or war. In that light it has been argued ; in no other light can I consider it, after the declarations made by members of the committee of foreign relations. Without intending any disrespect to the chair, I must be permitted to say, that if the decision yesterday was correct, " that it was not in order to advance any arguments against the resolution, drawn from topics before other committees of the House," the whole debate, nay, the report itself, on which we are acting, is disorderly ; since the increase of the military force is a subject, at this time, in agitation by a select committee, raised on that branch of the President's message. But it is impossible that the discussion of a question, broad as the wide ocean of our foreign concerns, involving every consideration of interest, of right, of happiness and of safety at home ; touching, in every point, all that is dear to freemen, " their lives, their fortunes, and their sacred honor," can be tied down by the narrow rules of technical routine.

The committee of foreign relations have, indeed, decided that the subject of arming the militia, (which has been pressed upon them as indispensable to the public security,) does not come within the scope of their authority. On what ground, I have been and

still am unable to see, they have felt themselves authorized to recommend the raising of standing armies, with a view, (as has been declared,) of immediate war—a war not of defence, but of conquest, of aggrandizement, of ambition—a war, foreign to the interests of this country; to the interests of humanity itself.

I know not how gentlemen, calling themselves republicans, can advocate such a war. What was their doctrine in 1798—9, when the command of the army, that highest of all possible trusts in any government, be the form what it may, was reposed in the bosom of the father of his country—the sanctuary of a nation's love—the only hope that never came in vain! When other worthies of the revolution—Hamilton, Pinkney and the younger Washington, men of tried patriotism, of approved conduct and valor, of untarnished honor, held subordinate command under him. Republicans were then unwilling to trust a standing army even to his hands, who had given proof that he was above all human temptation. Where now is the revolutionary hero, to whom you are about to confide this sacred trust? To whom will you confide the charge of leading the flower of our youth to the heights of Abraham? Will you find him in the person of an acquitted felon? What! then you were unwilling to vote an army where such men, as have been named, held high command! When Washington himself was at the head, did you show such reluctance, feel such scruples; and are you now nothing loth, fearless of every consequence? Will you say that your provocations were less then than now—when your direct commerce was interdicted, your ambassadors hooted with derision from the French court, tribute demanded, actual war waged upon you?


Those, who opposed the army then, were indeed denounced as the partizans of France; as the same men, (some of them at least,) are now held up as the advocates of England: those firm and undeviating republicans, who then dared, and now dare, to cling

to the ark of the constitution, to defend it even at the expense of their fame, rather than surrender themselves to the wild projects of mad ambition. There is a fatality attending plenitude of power. Soon or late, some mania seizes upon its possessors; they fall from the dizzy height through giddiness. Like a vast estate, heaped up by the labor and industry of one man, which seldom survives the third generation; power, gained by patient assiduity, by a faithful and regular discharge of its attendant duties, soon gets above its own origin. Intoxicated with their own greatness, the federal party fell. Will not the same causes produce the same effects now as then? Sir, you may raise this army, you may build up this vast structure of patronage; but "lay not the flattering unction to your souls," you will never live to enjoy the succession. You sign your political death-warrant.

[Mr. Randolph here adverted to the provocation to hostilities from shutting up the Mississippi by Spain, in 1803; but more fully to the conduct of the House in 1805—6, under the strongest of all imaginable provocatives to war—the actual invasion of our country. He read various passages from the President's public message of December 3d, 1805, in which he detailed the injuries and insults which had been received from Spain. Mr. Randolph then referred to a subsequent message of the President upon the same subject, and read the report of the committee to whom the message was referred, reprehending, in strong terms, the conduct of Spain, and recommending the passage of a bill making provision for raising a sufficient number of troops "to protect the southern frontier of the United States from Spanish inroad and insult, and to chastise the same." Mr. Randolph then proceeded.]

The peculiar situation of the frontier, at that time insulted, alone induced the committee to recommend the raising of regular troops. It was too remote from the population of the country for the militia to act, in repelling and chastising Spanish incursion. New Orleans

and its dependencies, were separated by a vast extent of wilderness from the settlements of the old United States; filled with a disloyal and turbulent people, alien to our institutions, language and manners, and disaffected towards our government. Little reliance could be placed upon them, and it was plain, that if "it was the intention of Spain to advance on our possessions until she be repulsed by an opposing force," that force must be a regular army, unless we were disposed to abandon all the country south of Tennessee; that, "the protection of our citizens and the spirit and the honor of our country required that force should be interposed." Nothing remained but for the legislature to grant the only practicable means, or to shrink from the most sacred of all its duties; to abandon the soil and its inhabitants to the mercy of hostile invaders. Yet this report, moderate as it was, was deemed of too strong a character by the House. It was rejected: and, at the motion of a gentleman from Massachusetts, (Mr. Bidwell,) [who has since taken a great fancy also to Canada, and marched off thither, in advance of the committee of foreign relations,] "two millions of dollars were appropriated towards," (not in full of,) "any extraordinary expense which might be incurred in the intercourse between the United States and foreign nations;" in other words, to buy off, at Paris, Spanish aggressions at home. Was this fact given in evidence of our impartiality towards the belligerents? That to the insults and injuries and actual invasion of one of them, we opposed not bullets, but dollars; that to Spanish invasion we opposed money, whilst for British aggression on the high seas we had arms—offensive war? But Spain was then shielded, as well as instigated, by a greater power. Hence our respect for her. Had we at that time acted as we ought to have done in defence of our rights, of the *natale solum* itself, we should, I feel confident, have avoided that series of insult, disgrace and injury, which has been poured out upon us in long, unbroken succession. We would not



then raise a small regular force for a country, where the militia could not act, to defend our own territory; now, we are willing to levy a great army, for great it must be to accomplish the proposed object, for a war of conquest and ambition; and this, too, at the very entrance of the "northern hive," of the strongest part of the union.

An insinuation has fallen from the gentleman from Tennessee, (Mr. Grundy,) that the late massacre of our brethren on the Wabash was instigated by the British government. Has the President given any such information? Is it so believed by the administration? I have cause to believe the contrary to be the fact; that such is not their opinion. This insinuation is of the grossest kind—a presumption the most rash; the most unjustifiable. Show but good ground for it, I will give up the question at the threshold. I will be ready to march to Canada. It is, indeed, well calculated to excite the feelings of the western people particularly, who are not quite so tenderly attached to our red brethren as some of our modern philosophers; but it is destitute of any foundation, beyond mere surmise and suspicion. What would be thought, if, without any proof whatsoever, a member should rise in his place and tell us, that the massacre in Savaunah—a massacre perpetrated by civilized savages with French commissions in their pockets, was excited by the French government? There is an easy and natural solution of the late transaction on the Wabash, in the well known character of the aboriginal savage of North America, without resorting to any such mere conjectural estimate. I am sorry to say, that, for this signal calamity and disgrace, the House is, in part, at least, answerable. Session after session, our table has been piled up with Indian treaties, for which the appropriations have been voted as a matter of course, without examination. Advantage has been taken of the spirit of the Indians, broken by the war which ended in the treaty of Grenville. Under the ascendancy then acquired over them,

they have been pent up, by subsequent treaties, into nooks; straitened in their quarters by a blind cupidity, seeking to extinguish their title to immense wildernesses—for which, (possessing, as we do already, more land than we can sell or use,) we shall not have occasion, for half a century to come. It is our own thirst for territory, our own want of moderation, that has driven these sons of nature to desperation, of which we feel the effects. Although not personally acquainted with the late Col. Daveiss, I feel, I am persuaded, as deep and serious regret for his loss as the gentleman from Tennessee himself. I know him only through the representation of a friend of the deceased, (Mr. Rowan,) sometime a member of this House: a man, who, for native force of intellect, manliness of character, and high sense of honor, is not inferior to any that have ever set here. With him I sympathize in the severest calamity that could befall a man of his cast of character. Would to God, they were both now on this floor. From my personal knowledge of the one, I feel confident that I should have his support—and I believe (judging of him from the representation of our common friend,) of the other also.

I cannot refrain from smiling at the liberality of the gentleman, in giving Canada to New York, in order to strengthen the northern balance of power; while, at the same time, he forewarns her, that the western scale must preponderate. I can almost fancy that I see the capitol in motion towards the falls of Ohio; after a short sojourn, taking its flight to the Mississippi, and finally alighting on Darien; which, when the gentleman's dreams are realized, will be a most eligible seat of government for the new republic, (or empire,) of the two Americas! But it seems, that "in 1808 we talked and acted foolishly," and to give some color of consistency to that folly, we must now commit a greater. Really I cannot conceive of a weaker reason, offered in support of a present measure, than the justification of a former folly. I hope we shall act a wise

part; take warning by our follies, since we have become sensible of them, and resolve to talk and act foolishly no more. It is, indeed, high time to give over such preposterous language and proceedings. This war of conquest, a war for the acquisition of territory and subjects, is to be a new commentary on the doctrine, that republicans are destitute of ambition; that they are addicted to peace, wedded to the happiness and safety of the great body of their people. But it seems, this is to be a holiday campaign: there is to be no expense of blood, or treasure, on our part; Canada is to conquer herself; she is to be subdued by the principles of fraternity! The people of that country are first to be seduced from their allegiance, and converted into traitors, as preparatory to making them good citizens! Although I must acknowledge, that some of our flaming patriots were thus manufactured, I do not think the process would hold good with a whole community. It is a dangerous experiment. We are to succeed in the French mode, by the system of fraternization—all is French! But how dreadfully it might be retorted on the southern and western slaveholding states. I detest this subornation of treason. No; if we must have them, let them fall by the valor of our arms; by fair, legitimate conquest; not become the victims of treacherous seduction.

I am not surprised at the war-spirit which is manifesting itself in gentlemen from the south. In the year 1805—6, in a struggle for the carrying trade of belligerent-colonial produce, this country was most unwisely brought into collision with the great powers of Europe. By a series of most impolitic and ruinous measures, utterly incomprehensible to every rational, sober minded man, the southern planters, by their own votes, have succeeded in knocking down the price of cotton to seven cents, and of tobacco, (a few choice crops excepted,) to nothing; and in raising the price of blankets, (of which a few would not be amiss in a Canadian campaign,) coarse woollens, and every arti-

cle of first necessity, three or four hundred *per centum*. And now, that by our own acts, we have brought ourselves into this unprecedented condition, we must get out of it in any way, but by an acknowledgment of our own want of wisdom and forecast. But is war the true remedy? Who will profit by it? Speculators; a few lucky merchants, who draw prizes in the lottery; commissaries and contractors. Who must suffer by it? The people. It is their blood, their taxes, that must flow to support it.

But gentlemen avowed, that they would not go to war for the carrying trade; that is, for any other but the direct export and import trade; that which carries our native products abroad, and brings back the return cargo; and yet they stickle for our commercial rights, and will go to war for them! I wish to know, in point of principle, what difference gentlemen can point out between the abandonment of this or of that maritime right? Do gentlemen assume the lofty port and tone of chivalrous redressers of maritime wrongs, and declare their readiness to surrender every other maritime right, provided they may remain unmolested in the exercise of the humble privilege of carrying their own produce abroad, and bringing back a return cargo? Do you make this declaration to the enemy at the outset? Do you state the *minimum* with which you will be contented, and put it in their power to close with your proposals at their option; give her the basis of a treaty ruinous and disgraceful beyond example and expression? And this too, after having turned up your noses in disdain at the treaties of Mr. Jay and Mr. Monroe! Will you say to England, "end the war when you please, give us the direct trade in our own produce, we are content?" But what will the merchants of Salem, and Boston, and New York, and Philadelphia, and Baltimore, the men of Marblehead and Cape Cod, say to this? Will they join in a war, professing to have for its object, what they would consider. (and justly too,) as the sacrifice of their

maritime rights, yet affecting to be a war for the protection of commerce?

I am gratified to find gentlemen acknowledging the demoralizing and destructive consequences of the non-importation law; confessing the truth of all that its opponents foretold, when it was enacted. And will you plunge yourselves in war, because you have passed a foolish and ruinous law, and are ashamed to repeal it? "But our good friend, the French emperor, stands in the way of its repeal, and as we cannot go too far in making sacrifices to him, who has given such demonstration of his love for the Americans, we must, in point of fact, become parties to his war. Who can be so cruel as to refuse him that favor?" My imagination shrinks from the miseries of such a connexion. I call upon the House to reflect, whether they are not about to abandon all reclamation for the unparalleled outrages, "insults and injuries" of the French government; to give up our claim for plundered millions, and I ask what reparation or atonement they can expect to obtain in hours of future dalliance, after they shall have made a tender of their person to this great deflowerer of the virginity of republics? We have by our own wise (I will not say wiseacre) measures, so increased the trade and wealth of Montreal and Quebec, that at last we begin to cast a wishful eye at Canada. Having done so much towards its improvement, by the exercise of "our restrictive energies," we begin to think the laborer worthy of his hire, and to put in claim for our portion. Suppose it ours, are we any nearer to our point? As his minister said to the king of Epirus, "may we not as well take our bottle of wine before as after this exploit? Go! march to Canada! leave the broad bosom of the Chesapeake and her hundred tributary rivers; the whole line of sea-coast from Machias to St. Mary's, unprotected! You have taken Quebec—have you conquered England? Will you seek for the deep foundations of her power in the frozen deserts of Labrador?"

“ Her march is on the mountain wave,
Her home is on the deep !”

Will you call upon her to leave your ports and harbors untouched, only just till you can return from Canada, to defend them? The coast is to be left defenceless, whilst men of the interior are revelling in conquest and spoil. But grant for a moment, for mere argument's sake, that in Canada you touched the sinews of her strength, instead of removing a clog upon her resources—an incumbrance, but one, which, from a spirit of honor, she will vigorously defend. In what situation would you then place some of the best men of the nation? As Chatham and Burke, and the whole band of her patriots, prayed for her defeat in 1776, so must some of the truest friends to their country deprecate the success of our arms against the only power that holds in check the arch-enemy of mankind.

The committee have outstripped the executive. In designating the power, against whom this force is to be employed, as has most unadvisedly been done in the preamble or manifesto with which the resolutions are prefaced, they have not consulted the views of the executive, that designation is equivalent to an abandonment of all our claims on the French government. No sooner was the report laid on the table, than the vultures were flocking round their prey—the carcass of a great military establishment. Men of tainted reputation, of broken fortune, (if they ever had any,) and of battered constitutions, “choice spirits tired of the dull pursuits of civil life,” were seeking after agencies and commissions, willing to doze in gross stupidity over the public fire; to light the public candle at both ends. Honorable men undoubtedly there are, ready to serve their country; but what man of spirit, or of self-respect, will accept a commission in the present army? The gentleman from Tennessee, (Mr. Grundy,) addressed himself yesterday, exclusively to the “republicans of the House.” I know not whether I may consider myself as entitled to any part of the benefit of the honor-

able gentleman's discourse. It belongs not, however, to that gentleman to decide. If we must have an exposition of the doctrines of republicanism, I shall receive it from the fathers of the church, and not from the junior apprentices of the law. I shall appeal to my worthy friends from Carolina, (Messrs. Macon and Stanford,) "men with whom I have measured my strength," by whose side I have fought during the reign of terror; for it was indeed an hour of corruption, of oppression, of pollution. It is not at all to my taste—that sort of republicanism which was supported, on this side of the Atlantic, by the father of the sedition law, John Adams, and by Peter Porcupine on the other. Republicanism! of John Adams and William Cobbett!

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Gallant crusaders in the holy cause of republicanism! Such "republicanism does, indeed, mean any thing or nothing." Our people will not submit to be taxed for this war of conquest and dominion. The government of the United States was not calculated to wage offensive foreign war; it was instituted for the common defence and general welfare; and whosoever should embark it in a war of offence, would put it to a test which it is by no means calculated to endure. Make it out that Great Britain has instigated the Indians on a late occasion, and I am ready for battle; but not for dominion. I am unwilling, however, under present circumstances, to take Canada, at the risk of the constitution, to embark in a common cause with France and be dragged at the wheels of the car of some Burr or Bonaparte. For a gentleman from Tennessee, or Genessee, or lake Champlain, there may be some prospect of advantage. Their hemp would bear a great price by the exclusion of foreign supply. In that too, the great importers are deeply interested. The upper country on the Hudson and the lakes would be enriched by the supplies for the troops, which they alone could furnish. They would have the exclusive market: to say nothing of the increased

preponderance from the acquisition of Canada and that section of the union, which the southern and western states have already felt so severely in the apportionment bill.

[Mr. Randolph here adverted to the defenceless state of the sea-ports, and particularly of the Chesapeake, and observed, that there was but a single spot on either shore, which could be considered in tolerable security.]

Permit me now, sir, to call your attention to the subject of our black population. I will touch this subject as tenderly as possible. It is with reluctance that I touch it at all; but in cases of great emergency, the state physician must not be deterred by a sickly, hysterical humanity, from probing the wound of his patient: he must not be withheld by a fastidious and mistaken delicacy from representing his true situation to his friends, or even to the sick man himself, when the occasion calls for it. What is the situation of the slave-holding states? During the war of the revolution, so fixed were their habits of subordination, that while the whole country was overrun by the enemy, who invited them to desert, no fear was ever entertained of an insurrection of the slaves. During a war of seven years, with our country in possession of the enemy, no such danger was ever apprehended. But should we, therefore, be unobservant spectators of the progress of society within the last twenty years; of the silent, but powerful change wrought, by time and chance, upon its composition and temper? When the fountains of the great deep of abomination were broken up, even the poor slaves did not escape the general deluge. The French revolution has polluted even them. Nay, there have not been wanting men in this House, witness our legislative Legendre, the butcher who once held a seat here, to preach upon this floor these imprescriptible rights to a crowded audience of blacks in the galleries; teaching them, that they are equal to

their masters; in other words, advising them to cut their throats. Similar doctrines have been disseminated by pedlars from New England and elsewhere, throughout the southern country: and masters have been found so infatuated, as by their lives and conversation, by a general contempt of order, morality and religion, unthinkingly to cherish these seeds of self-destruction to them and their families. What has been the consequence? Within the last ten years, repeated alarms of insurrection among the slaves; some of them awful indeed. From the spreading of this infernal doctrine, the whole southern country has been thrown into a state of insecurity. Men, dead to the operation of moral causes, have taken away from the poor slave his habits of loyalty and obedience to his master, which lightened his servitude by a double operation; beguiling his own cares and disarming his master's suspicions and severity: and now, like true empirics in politics, you are called upon to trust to the mere physical strength of the fetter which holds him in bondage. You have deprived him of all moral restraint; you have tempted him to eat of the fruit of the tree of knowledge, just enough to perfect him in wickedness; you have opened his eyes to his nakedness; you have armed his nature against the hand that has fed, that has clothed him, that has cherished him in sickness; that hand, which before he became a pupil of your school, he had been accustomed to press with respectful affection. You have done all this—and then show him the gibbet and the wheel, as incentives to a sullen, repugnant obedience. God forbid, sir, that the southern states should ever see an enemy on their shores, with these infernal principles of French fraternity in the van. While talking of taking Canada, some of us are shuddering for our own safety at home. I speak from facts, when I say, that the night-bell never tolls for fire in Richmond, that the mother does not hug her infant more closely to her bosom. I have been a witness of some of the alarms in the capital of Virginia.

How have we shown our sympathy with the patriots of Spain, or with the American provinces? By seizing on one of them, her claim to which we had formerly respected, as soon as the parent country was embroiled at home. Is it thus we yield them assistance against the arch-fiend, who is grasping at the sceptre of the civilized world? The object of France is as much Spanish-America as old Spain herself. Much as I hate a standing army, I could almost find it in my heart to vote one, could it be sent to the assistance of the Spanish patriots.

[Mr. Randolph then proceeded to notice the unjust and illiberal imputation of British attachments, against certain characters in this country, sometimes insinuated in that House, but openly avowed out of it.]

Against whom are these charges brought? Against men, who in the war of the revolution, were in the councils of the nation, or fighting the battles of your country. And by whom are they made? By runaways chiefly from the British dominions, since the breaking out of the French troubles. It is insufferable. It cannot be borne. It must and ought, with severity, to be put down in this House; and out of it to meet the lie direct. We have no fellow-feeling for the suffering and oppressed Spaniards! Yet even them we do not reprobate. Strange! that we should have no objection to any other people or government, civilized or savage, in the whole world! The great autocrat of all the Russias, receives the homage of our high consideration. The Dey of Algiers and his divan of pirates, are very civil, good sort of people, with whom we find no difficulty in maintaining the relations of peace and amity. "Turks, Jews and Infidels," Melimelli or the Little Turtle: barbarians and savages of every clime and color, are welcome to our arms. With chiefs of banditti, negro or mulatto, we can treat and can trade. Name, however, but England, and all our antipathies are up in arms against her. Against whom? Against those whose blood runs in our veins: in common with whom, we claim Shakes-

peare and Newton, and Chatham, for our countrymen: whose form of government is the freest on earth, our own only excepted; from whom every valuable principle of our own institutions has been borrowed—representation—jury trial—voting the supplies—writ of *habeas corpus*—our whole civil and criminal jurisprudence—against our fellow protestants, identified in blood, in language, in religion with ourselves. In what school did the worthies of our land, the Washingtons, Henrys, Hancocks, Franklins, Rutledges of America, learn those principles of civil liberty, which were so nobly asserted by their wisdom and valor? American resistance to British usurpation has not been more warmly cherished by these great men and their compatriots; not more by Washington, Hancock and Henry, than by Chatham and his illustrious associates in the British parliament. It ought to be remembered, too, that the heart of the English people was with us. It was a selfish and corrupt ministry, and their servile tools, to whom we were not more opposed than they were. I trust that none such may ever exist among us; for tools will never be wanting to subserve the purposes, however ruinous or wicked, of kings and ministers of state. I acknowledge the influence of a Shakespeare and a Milton upon my imagination, of a Locke upon my understanding, of a Sidney upon my political principles, of a Chatham upon qualities which, would to God, I possessed in common with that illustrious man! of a Tillotson, a Sherlock and a Porteus, upon my religion. This is a British influence which I can never shake off. I allow much to the just and honest prejudices growing out of the revolution. But by whom have they been suppressed, when they ran counter to the interests of my country? By Washington. By whom, would you listen to them, are they most keenly felt? By felons escaped from the jails of Paris, Newgate and Kilmainham, since the breaking out of the French revolution; who, in this abused and insulted country, have set up for political

teachers, and whose disciples give no other proof of their progress in republicanism, except a blind devotion to the most ruthless military despotism that the world ever saw. These are the patriots, who scruple not to brand with the epithet of tory, the men, (looking towards the seat of Col. Stewart,) by whose blood your liberties have been cemented. These are they, who hold in such keen remembrance the outrages of the British armies, from which many of them are deserters. Ask these self-styled patriots where they were during the American war, (for they are, for the most part, old enough to have borne arms,) and you strike them dumb; their lips are closed in eternal silence. If it were allowable to entertain partialities, every consideration of blood, language, religion and interest, would incline us towards England: and yet, shall they be alone extended to France and her ruler, whom we are bound to believe a chastening God suffers as the scourge of a guilty world! On all other nations he tramples; he holds them in contempt; England alone he hates; he would, but he cannot despise her; fear cannot despise; and shall we disparage our ancestors? Shall we bastardize ourselves by placing them even below the brigands of St. Domingo?—with whom Mr. Adams negotiated a sort of treaty, for which he ought to have been, and would have been impeached, if the people had not previously passed sentence of disqualification for their service upon him. This antipathy to all that is English, must be French.

But the outrages and injuries of England—bred up in the principles of the revolution, I can never palliate, much less defend them. I well remember flying, with my mother and her new born child, from Arnold and Philips—and we were driven by Tarleton and other British Pandours, from pillar to post, while her husband was fighting the battles of his country. The impression is indelible on my memory: and yet, (like my worthy old neighbor, who added seven buckshot to every cartridge at the battle of Guilford, and drew a

fine sight at his man,) I must be content to be called a tory by a patriot of the last importation. Let us not get rid of one evil, (supposing it possible,) at the expense of a greater: *mutatis mutandis*, suppose France in possession of the British naval power—and to her the trident must pass, should England be unable to wield it—what would be your condition? What would be the situation of your sea-ports, and their sea-faring inhabitants? Ask Hamburg, Lubec! Ask Savannah! What! sir, when their privateers are pent up in our harbors by the British bull-dogs, when they receive at our hands, every right of hospitality, from which their enemy is excluded; when they capture in our own waters, interdicted to British armed ships, American vessels; when such is their deportment towards you, under such circumstances; what could you expect if they were the uncontrolled lords of the ocean? Had those privateers at Savannah borne British commissions; or had your shipments of cotton, tobacco, ashes, and what not, to London and Liverpool, been confiscated, and the proceeds poured into the English exchequer—my life upon it, you would never have listened to any miserable wire-drawn distinctions between “orders and decrees affecting our neutral rights,” and “municipal decrees,” confiscating in mass, your whole property: you would have had instant war! The whole land would have blazed out in war. And shall republicans become the instruments of him who has effaced the title of Attila to the ‘scourge of God!’ Yet, even Attila, in the falling fortunes of civilization, had, no doubt, his advocates, his tools, his minions, his parasites in the very countries that he overrun; sons of that soil, whereon his horse had trod; where grass could never after grow. If perfectly fresh, instead of being as I am, my memory clouded, my intellect stupified, my strength and spirits exhausted, I could not give utterance to that strong detestation which I feel towards. (above all other

works of the creation,) such characters as Gengis, Tamerlane, Kouli-Khan or Bonaparte. My instincts involuntarily revolt at their bare idea. Malefactors of the human race, who have ground down man to a mere machine of their impious and bloody ambition! Yet under all the accumulated wrongs, and insults, and robberies of the last of these chieftains, are we not, in point of fact, about to become a party to his views, a partner in his wars?

But before this miserable force of ten thousand men is raised to take Canada, I beg gentlemen to look at the state of defence at home; to count the cost of the enterprize before it is set on foot, not when it may be too late; when the best blood of the country shall be spilt, and nought but empty coffers left to pay the cost. Are the bounty lands to be given in Canada? It might lessen my repugnance to that part of the system, to granting these lands, not to these miserable wretches who sell themselves to slavery for a few dollars, and a glass of gin, but in fact, to the clerks in our offices, some of whom, with an income of fifteen hundred or two thousand dollars, live at the rate of four or five thousand, and yet grow rich; who, perhaps, at this moment, are making out blank assignments for these land rights. I beseech the House, before they run their heads against this post, Quebec, to count the cost. My word for it, Virginia planters will not be taxed to support such a war—a war which must aggravate their present distresses; in which they have not the remotest interest. Where is the Montgomery, or even the Arnold, or the Burr, who is to march to the Point Levi?

I call upon those professing to be republicans, to make good the promises, held out by their republican predecessors, when they came into power; promises, which for years afterwards, they honestly, faithfully fulfilled. We have vaunted of paying off the national debt; of retrenching useless establishments; and yet

have now become as infatuated with standing armies, loans, taxes, navies and war, as ever were the Essex Junto.

[Mr. Randolph apologized for his very desultory manner of speaking. He regretted that his bodily indisposition had obliged him to talk, perhaps, somewhat wildly; yet he trusted some method would be found in his madness.]

SPEECH OF JOHN C. CALHOUN,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE
UNITED STATES, DECEMBER 12, 1811,

On the second resolution reported by the committee of foreign relations ; " That an additional force of ten thousand regular troops, ought to be immediately raised to serve for three years : and that a bounty in lands ought to be given to encourage enlistment."



MR. SPEAKER,

I UNDERSTOOD the opinion of the committee of foreign relations, differently from what the gentleman from Virginia, (Mr. Randolph,) has stated to be his impression. I certainly understood that committee as recommending the measures now before the House, as a preparation for war ; and such in fact was its express resolve, agreed to, I believe by every member, except that gentleman. I do not attribute any wilful misstatement to him, but consider it the effect of inadvertency or mistake. Indeed, the report could mean nothing but war or empty menace. I hope no member of this House is in favor of the latter. A bullying, menacing system has every thing to condemn and nothing to recommend it ; in expense it is almost as considerable as war ; it excites contempt abroad, and destroys confidence here. Menaces are serious things, and, if we expect any good from them, they ought to be resorted to with as much caution and seriousness, as war itself ; and should, if not successful, be invariably followed by it. It was not the gentleman from Tennessee, (Mr. Grundy,) that made this a war question. The resolve contemplates an additional, regular force ; a measure confessedly improper, but as a preparation for war, but undoubtedly necessary in that event. Sir. I am not insensible of the weighty import-

ance of this question, for the first time submitted to this House, as a redress of our long list of complaints against one of the belligerents ; but, according to my mode of thinking on this subject, however serious the question, whenever I am on its affirmative side, my conviction must be strong and unalterable. War, in this country, ought never to be resorted to but when it is clearly justifiable and necessary ; so much so, as not to require the aid of logic to convince our reason, nor the ardor of eloquence to inflame our passions. There are many reasons why this country should never resort to war but for causes the most urgent and necessary. It is sufficient, that under a government like ours, none but such will justify it in the eye of the nation ; and were I not satisfied that such is our present cause, I certainly would be no advocate of the proposition now before the House.

Sir, I prove the war, should it ensue, justifiable, by the express admission of the gentleman from Virginia ; and necessary, by facts undoubted, and universally admitted ; such as that gentleman did not pretend to controvert. The extent, duration, and character of the injuries received ; the failure of those peaceful means, heretofore resorted to for the redress of our wrongs, is my proof that it is necessary. Why should I mention the impressment of our seamen ; depredation on every branch of our commerce, including the direct export trade, continued for years, and made under laws, which professedly undertake to regulate our trade, with other nations ; negotiation resorted to, time after time, till it is become hopeless ; the restrictive system persisted in to avoid war, and in the vain expectation of returning justice ? The evil still grows, and, in each succeeding year, swells in extent and pretension beyond the preceding. The question, even in the opinion and admission of our opponents, is reduced to this single point ; which shall we do, abandon or defend our own commercial and maritime rights and the personal liberties of our citizens employed in exerting

them? These rights are essentially attacked, and war is the only means of redress. The gentleman from Virginia, has suggested none; unless we consider the whole of his speech as recommending patient and resigned submission as the best remedy. Sir, which alternative this House ought to embrace, it is not for me to say. I hope the decision is made already, by a higher authority than the voice of any man. It is not for the human tongue to instill the sense of independence and honor. This is the work of nature; a generous nature that disdains tame submission to wrongs.

This part of the subject is so imposing, as to enforce silence even on the gentleman from Virginia. He dared not to deny his country's wrongs or vindicate the conduct of her enemy.

Only one point of that gentleman's argument had any, the most remote relation to this point. He would not say, we had not a good cause of war; but *insisted*, that it was our duty to define that cause. If he means that this House ought, at this stage of the proceeding, or any other, to enumerate such violations of our rights, as we are willing to contend for, he prescribes a course, which neither good sense nor the usage of nations warrants. When we contend, let us contend for all our rights; the doubtful and the certain; the unimportant and essential. It is as easy to struggle, or even more so, for the whole as a part. At the termination of the contest, secure all that our wisdom and valor and the fortune of the war will permit. This is the dictate of common sense; such also is the usage of nations. The single instance alluded to, the endeavor of Mr. Fox to compel Mr. Pitt to define the object of the war against France, will not support the gentleman from Virginia in his position. That was an extraordinary war for an extraordinary purpose, and could not be governed by the usual rules. It was not for conquest, or for redress of injury; but to impose a government on France. which she refused to

receive ; an object so detestable, that an avowal dare not be made. Sir, here I might rest the question. The affirmative of the proposition is established. I cannot but advert, however, 'to the complaint of the gentleman from Virginia, the first time he was up on this question. He said, he found himself reduced to the necessity of supporting the negative side of the question, before the affirmative was established. Let me tell that gentleman, that there is no hardship in his case. It is not every affirmative that ought to be proved. Were I to affirm, the House is now in session, would it be reasonable to ask for proof ? He who would deny its truth, on him would be the proof of so extraordinary a negative. How then could the gentleman, after his admissions, with the facts before him and the nation, complain ? The causes are such as to warrant, or rather make it indispensable in any nation, not absolutely dependent, to defend its rights by force. Let him, then, show the reasons why we ought not so to defend ourselves. On him, then, is the burden of proof. This he has attempted ; he has endeavored to support his negative.

Before I proceed to answer the gentleman particularly, let me call the attention of the House to one circumstance ; that is, that almost the whole of his arguments consisted of an enumeration of evils always incident to war, however just and necessary ; and that, if they have any force, it is calculated to produce unqualified submission to every species of insult and injury. I do not feel myself bound to answer arguments of the above description ; and if I should touch on them, it will be only incidentally, and not for the purpose of serious refutation. The first argument of the gentleman which I shall notice, is the unprepared state of the country. Whatever weight this argument might have, in a question of immediate war, it surely has little in that of preparation for it. If our country is unprepared, let us remedy the evil as soon as possible. Let the gentleman submit his plan ; and if a reasona-

ble one, I doubt not it will be supported by the House. But, sir, let us admit the fact and the whole force of the argument; I ask whose is the fault? Who has been a member for many years past, and has seen the defenceless state of his country even near home, under his own eyes, without a single endeavor to remedy so serious an evil? Let him not say, "I have acted in a minority." It is no less the duty of the minority than a majority to endeavor to serve our country. For that purpose we are sent here; and not for that of opposition. We are next told of the expenses of the war; and that the people will not pay taxes. Why not? Is it a want of capacity? What, with one million tons of shipping; a trade of near one hundred million dollars; manufactures of one hundred and fifty million dollars, and agriculture of thrice that amount, shall we be told the country wants capacity to raise and support ten thousand or fifteen thousand additional regulars? No; it has the ability, that is admitted; but will it not have the disposition? Is not the course a just and necessary one? Shall we then utter this libel on the nation? Where will proof be found of a fact so disgraceful? It is said, in the history of the country twelve or fifteen years ago. The case is not parallel. The ability of the country has greatly increased since. The object of that tax was unpopular. But on this, as well as my memory and almost infant observation at that time serve me, the objection was not to the tax, or its amount, but the mode of collection. The eye of the nation was frightened by the number of officers; its love of liberty shocked with the multiplicity of regulations. We, in the vile spirit of imitation, copied from the most oppressive part of European laws on that subject, and imposed on a young and virtuous nation all the severe provisions made necessary by corruption and long growing chicanery. If taxes should become necessary, I do not hesitate to say the people will pay cheerfully. It is for their government and their cause, and would be their interest and duty to pay. But it may be, and I believe was said, that

the nation will not pay taxes, because the rights violated are not worth defending; or that the defence will cost more than the profit.

Sir, I here enter my solemn protest against this low and "calculating avarice" entering this hall of legislation. It is only fit for shops and counting-houses, and ought not to disgrace the seat of sovereignty by its squalid and vile appearance. Whenever it touches sovereign power, the nation is ruined. It is too shortsighted to defend itself. It is an unpromising spirit, always ready to yield a part to save the balance. It is too timid to have in itself the laws of self-preservation. It is never safe but under the shield of honor. Sir, I only know of one principle to make a nation great, to produce in this country not the form but real spirit of union, and that is, to protect every citizen in the lawful pursuit of his business. He will then feel that he is backed by the government, that its arm is his arms, and will rejoice in its increased strength and prosperity. Protection and patriotism are reciprocal. This is the road that all great nations have trod. Sir, I am not versed in this calculating policy; and will not, therefore, pretend to estimate in dollars and cents the value of national independence, or national affection. I cannot dare to measure in shillings and pence the misery, the stripes and the slavery of our impressed seamen; nor even to value our shipping, commercial and agricultural losses under the orders in council and the British system of blockade. I hope I have not condemned any prudent estimate of the means of a country, before it enters on a war. This is wisdom, the other folly.

Sir, the gentleman from Virginia has not failed to touch on the calamity of war; that fruitful source of declamation, by which pity becomes the advocate of cowardice; but I know not what we have to do with that subject. If the gentleman desires to repress the gallant ardor of our countrymen by such topics; let me inform him, that true courage regards only the

cause, that it is just and necessary ; and that it despises the pain and danger of war. If he really wishes to promote the cause of humanity, let his eloquence be addressed to Lord Wellesley or Mr. Percival, and not the American Congress. Tell them if they persist in such daring insult and injury to a neutral nation, that, however inclined to peace, it will be bound in honor and interest to resist ; that their patience and benevolence, however great, will be exhausted ; that the calamity of war will ensue, and that they, in the opinion of wounded humanity, will be answerable for all its devastation and misery. Let melting pity, a regard to the interests of humanity, stay the hand of injustice, and my life on it, the gentleman will not find it difficult to call off his country from the bloody scenes of war. We are next told of the danger of war ! I believe we are all ready to acknowledge its hazard and accidents ; but I cannot think we have any extraordinary danger to contend with, at least so much as to warrant an acquiescence in the injuries we have received ; on the contrary, I believe no war can be less dangerous to internal peace, or national existence. But we are told of the black population of the southern states. As far as the gentleman from Virginia speaks of his own personal knowledge, I will not pretend to contradict him ; I only regret that such is the dreadful state of his particular part of the country. Of the southern section, I too have some personal knowledge, and can say, that in South Carolina no such fears in any part are felt. But, sir, admit the gentleman's statement ; will a war with Great Britain increase the danger ? Will the country be less able to repress insurrection ? Had we any thing to fear from that quarter, which I sincerely disbelieve, in my opinion, the precise time of the greatest safety is during a war, in which we have no fear of invasion ; then the country is most on its guard ; our militia the best prepared ; and standing force the greatest. Even in our revolution, no attempts were made by that portion of our population ; and,

however the gentleman may frighten himself with the disorganizing effects of French principles, I cannot think our ignorant blacks have felt much of their baneful influence. I dare say, more than one half of them never heard of the French revolution. But as great as is the danger from our slaves, the gentleman's fears end not there—the standing army is not less terrible to him.

Sir, I think a regular force, raised for a period of actual hostilities, cannot be called a standing army. There is a just distinction between such a force, and one raised as a peace establishment. Whatever may be the composition of the latter, I hope the former will consist of some of the best materials of the country. The ardent patriotism of our young men, and the reasonable bounty in land, which is proposed to be given, will impel them to join their country's standard and to fight her battles; they will not forget the citizen in the soldier, and, in obeying their officer, learn to condemn their constitution. In our officers and soldiers we will find patriotism no less pure and ardent than in the private citizen; but if they should be depraved, as represented, what have we to fear from twenty-five or thirty thousand regulars? Where will be the boasted militia of the gentleman? Can one million of militia be overpowered by thirty thousand regulars? If so, how can we rely on them against a foe invading our country? Sir, I have no such contemptuous idea of our militia; their untaught bravery is sufficient to crush all foreign and internal attempts on their country's liberties. But we have not yet come to the end of the chapter of dangers. The gentleman's imagination, so fruitful on this subject, conceives, that our constitution is not calculated for war, and that it cannot stand its rude shock. This is rather extraordinary; we must then depend upon the pity or contempt of other nations, for our existence. The constitution, it seems, has failed in its essential part, "to provide for the common defence." No, says the gentleman

from Virginia, it is competent for a defensive, but not an offensive war. It is not necessary for me to expose the error of this opinion. Why make the distinction in this instance? Will he pretend to say, that this is an offensive war; a war of conquest? Yes, the gentleman has dared to make this assertion, and for reasons no less extraordinary than the assertion *itself*. He says, our rights are violated on the ocean, and that these violations affect our shipping and commercial rights, to which the Canadas have no relation. The doctrine of retaliation has been much abused of late by an unnatural extension; we have now to witness a new abuse. The gentleman from Virginia has limited it down to a point. By his system, if you receive a blow on the breast, you dare not return it on the head; you are obliged to measure and return it on the precise point on which it was received. If you do not proceed with this mathematical accuracy, it ceases to be just self-defence; it becomes an unprovoked attack.

In speaking of Canada, the gentleman from Virginia introduced the name of Montgomery with much feeling and interest. Sir, there is danger in that name to the gentleman's argument. It is sacred to heroism! It is indignant of submission! This calls my memory back to the time of our revolution; to the Congress of '74 and '75. Suppose a speaker of that day had risen and urged all the arguments which we have heard on on this subject; had told that Congress, "your contest is about the right of laying a tax; the attempt on Canada has nothing to do with it; the war will be expensive; danger and devastation will overspread our country, and the power of Great Britain is irresistible?" With what sentiment, think you, would such doctrines have been then received? Happy for us, they had no force at that period of our country's glory. Had they been then acted on, this hall would never have witnessed a great nation convened to deliberate for the general good; a mighty empire, with prouder prospects than any nation

the sun ever shone on, would not have risen in the west. No; we would have been vile, subjected colonies; governed by that imperious rod which Britain holds over her distant provinces. Sir, the gentleman from Virginia attributes the preparation for war to every thing but its true cause. He endeavored to find it in the probable rise of the price of hemp. He represents the people of the western states as willing to plunge our country into war, for such base and precarious motives. I will not reason on this point. I see the cause of their ardor, not in such base motives, but in their known patriotism and disinterestedness. No less mercenary is the reason which he attributes to the southern states. He says, that the non-importation act has reduced cotton to nothing, which has produced a feverish impatience. Sir, I acknowledge the cotton of our farms is worth but little; but not for the cause assigned by the gentleman from Virginia. The people of that section do not reason as he does; they do not attribute it to the efforts of their government to maintain the peace and independence of their country; they see in the low price of their produce, the hand of foreign injustice; they know well, without the market of the continent, the deep and steady current of supply will glut that of Great Britain; they are not prepared for the colonial state to which again that power is endeavoring to reduce us. The manly spirit of that section of our country will not submit to be regulated by any foreign power.

The love of France and the hatred of England, has also been assigned as the cause of the present measures. France has not done us justice, says the gentleman from Virginia, and how can we, without partiality, resist the aggressions of England. I know, sir, we have still causes of complaint against France; but it is of a different character from those against England. She professes now to respect our rights, and there cannot be a reasonable doubt, but that the most objectionable parts of her decrees, as far as they respect us, are

repealed. We have already formally acknowledged this to be a fact. I, however, protest against the whole of the principles on which this doctrine is founded. It is a novel doctrine, and nowhere to be found out of this House, that you cannot select your antagonist without being guilty of partiality. Sir, when two invade your rights, you may resist both, or either, at your pleasure. It is regulated by prudence, and not by right. The stale imputation of partiality to France, is better calculated for the columns of a newspaper, than for the walls of this House. I ask, in this particular, of the gentleman from Virginia, but for the same measure which he claims for himself. That gentleman is at a loss to account for, what he calls, our hatred to England. He asks, how can we hate the country of Locke, of Newton, Hampden and Chatham; a country having the same language and customs with ourselves, and descending from a common ancestry. Sir, the laws of human affections are uniform. If we have so much to attach us to that country, powerful, indeed, must be the cause which has overpowered it.

Yes, sir, there is a cause strong enough. Not that occult, courtly affection, which he has supposed to be entertained for France; but it is to be found in continued and unprovoked insult and injury. A cause so manifest, that the gentleman from Virginia had to exert much ingenuity to overlook it. But, sir, here I think the gentleman, in his eager admiration of that country, has not been sufficiently guarded in his argument. Has he reflected on the cause of that admiration? Has he examined the reasons of our high regard for her Chatham? It is his ardent patriotism; the heroic courage of his mind, that could not brook the least insult or injury offered to his country, but thought that her interest and honor ought to be vindicated at every hazard and expense. I hope, when we are called on to admire, we shall also be asked to imitate. I hope the gentleman does not wish a monopoly

of those great virtues to remain to that nation. The balance of power has also been introduced as an argument for submission. England is said to be a barrier against the military despotism of France. There is, sir, one great error in our legislation. We are ready enough to protect the interest of the states; and it should seem, from this argument, to watch over those of a foreign nation, while we grossly neglect our own immediate concerns. This argument of the balance of power is well calculated for the British parliament, but not at all fitted to the American Congress. Tell them, that they have to contend with a mighty power, and that if they persist in insult and injury to the American people, they will compel them to throw the whole weight of their force into the scale of their enemy. Paint the danger to them, and if they will desist from injury, we, I answer for it, will not disturb the balance. But it is absurd for us to talk of the balance of power, while they, by their conduct, smile with contempt at our simple, good-natured policy. If, however, in the contest, it should be found, that they underrate us, which I hope and believe, and that we can effect the balance of power, it will not be difficult for us to obtain such terms as our rights demand. I, sir, will now conclude by adverting to an argument of the gentleman from Virginia, used in debate on a preceding day. He asked, why not declare war immediately. The answer is obvious; because we are not yet prepared. But, says the gentleman, such language, as is here held, will provoke Great Britain to commence hostilities. I have no such fears. She knows well, that such a course would unite all parties here; a thing, which, above all others, she most dreads. Besides, such has been our past conduct, that she will still calculate on our patience and submission, till war is actually commenced.

SPEECH OF JAMES A. BAYARD,

ON

HIS MOTION TO AMEND THE FOLLOWING RESOLUTION, OFFERED BY MR. GILES, BY STRIKING OUT THAT PART WHICH IS IN ITALICS ;

DELIVERED IN THE SENATE OF THE UNITED STATES,
FEBRUARY 14, 1809 ;

Resolved, That the several laws laying an embargo on all ships and vessels in the ports and harbors of the United States, be repealed on the 4th day of March next, *except as to Great Britain and France and their dependencies; and that provision be made by law for prohibiting all commercial intercourse with those nations and their dependencies, and the importation of any article into the United States, the growth, produce or manufacture of either of the said nations, or of the dominions of either of them.*



It will be perceived, Mr. President, by the motion which I have made to amend the resolution, offered by the honorable gentleman from Virginia, that I do not approve of the course, which it seems the government have determined at length to pursue. The honorable gentleman has told us, it is not his plan, and I give him credit for the fairness and candor with which he has avowed the measure to which he would have resorted. He would have raised the embargo and declared war against England. Being opposed, in this scheme by a majority of his friends, his next proposition was to issue letters of marque and reprisal; finding, however, that the other House had refused to go even so far, he had, on the principle of concession and conciliation with his friends, agreed to take the course proposed in the resolution, in hopes, that our vessels, going upon the ocean and being captured under the orders in council, would drag the nation into a war: when he

presumed, the war being made upon us, we would agree to fight our enemy. Sir, it is upon this very ground, and considering this as its object, that I am opposed to the resolution. England is not our enemy, nor does a necessity exist to make her so. I am not going to deny, that we have many, and heavy complaints to make against her conduct, nor shall I contend, that causes do not exist, which might justify a war; but I mean to say, that policy forbids the measure, and that honor does not require it.

The gentleman has painted, in very glowing colors, the wrongs and insults which we have suffered from British violence; he has recorded, in his catalogue, the offensive acts of British agents, as well as the injurious pretensions and orders of the government. I mean not to defend, nor even to palliate any aggression, public or private, against the rights or honor of our country; but, sir, I cannot conceal my surprise, that this gentleman, so much alive to British wrongs, should be insensible to every thing which we have suffered from France. The gentleman has exhausted the language of terms of invective and reproach against the British government and nation, but he has been silent as the grave, as to the French. How can it be, that what is wrong in Britain is right in France? And wherefore is it, that the same acts of France are borne with patience, which, proceeding from Britain, excite such a spirit of indignation? You have the orders in council to complain of; but have you not the decrees of his imperial majesty? We are told, that the orders in council give us laws, regulate our commerce, and degrade us to the state of colonies; but do they contain more, or do they extend as far as the imperial decrees? Do they make us more the colonies of Britain, than the decrees make us the colonies of France? And are we to invoke the spirit of liberty and patriotism to a resistance to Britain, while we are tamely yielding ourselves to French bondage? We are told of our vessels being forced into British ports

and compelled to pay tribute; but nothing is said of their being invited into French harbors, and then seized and confiscated.

With all the complaints against the British orders, and the silence as to French decrees, ought we not to be surprised in discovering, that the orders are exceeded in severity and injustice by the decrees? Let it be remembered, that this system of outrage upon neutral rights originated, on the part of France, in the Berlin decree. That decree, in effect, forbids neutrals to trade to England, or her colonies, or to purchase, or to carry their manufactures or produce. In commencing this system, France justified its principle, and compelled her adversary to retaliate by acts of the same injustice against neutrals who submitted to it. Tell me which we have first and most to blame, the one who set the example, or him who followed it?

It is a consideration also of great weight, that at the time when the Berlin decree issued, France was bound to the United States by a solemn treaty to permit the trade which that decree prohibits; a treaty, signed by Bonaparte himself, and expressly providing for the freedom and security of our commerce with his enemy, in the event of war: and if the orders in council are a violation of the law of nations, they are not, like the French decrees, a breach of plighted faith. The orders leave to us the direct colonial trade. Our intercourse is not interrupted with the colonies and dependencies of France; but the decrees interdict all neutral commerce with the colonies and dependencies of England, as well as with the mother country. Your very ships, which enter an English port, are denationalized, and are liable, after the lapse of any time, though performing a voyage otherwise innocent, to seizure and confiscation.

Another feature of injustice and iniquity, distinguishes the decrees from the orders. By the orders, our merchants are apprized of the commerce which is interdicted. Full time for notice of the prohibition is

allowed, before the property is exposed, by a transgression of the orders, to be confiscated or seized. No such forbearance can be discovered in the decrees, which are to be indiscriminately executed upon the innocent and the guilty; upon those who never heard, or could have heard of them, in the same manner as upon those who knowingly violate them.

I hope, sir, it will not be understood, that I mean to defend the orders in council, or to advise this nation to submit to them; but I could wish to direct some portion of the warmth and indignation, which has been expressed against them, against those decrees which produced them, and which exceed them in iniquity and outrage.

The avowed object of the honorable gentleman from Virginia, is a war with England. On this subject, I make but one question; is it possible to avoid it with honor? If this possibility exists, the war ought to be avoided. And it is my opinion, that it does exist. To this opinion I am, in a great degree, led by a want of confidence in the sincerity of the disposition of our executive to settle our differences with Great Britain. Your measures have not been impartial as to the belligerents, and your negotiations have not been sincere as to England. The gentleman from Virginia has called this charge of insincerity a miserable vision. I believe, sir, it is a miserable and melancholy fact; and if you will have patience with me, I will furnish proof enough to support the belief of the most incredulous.

I mean to show, that your government has had it in its power to secure peace with Britain, by the settlement of the differences between the two nations, and that the means have not only been neglected, but means employed to prevent such a settlement from taking place.

It will be necessary for us to consider what those differences were. They may be referred to three heads: first. the rule, as it is called, of the war of

1756: second, constructive blockades: third, impressment of seamen on board of American merchant vessels.

I do not mean to say, that there were no other causes of complaint, arising from the indiscretions and insolence of British commanders; but they had not the character of national differences, and *would*, probably, have soon ceased and been forgotten, if the points of controversy between the governments had been amicably arranged. To settle the differences, which I have stated, a negotiation was opened in London, in 1803, and carried on till December, 1806. It is remarkable, that while this negotiation was depending and progressing, our government had recourse to a step, in its nature calculated to repel, instead of to invite, the British government to a friendly settlement. In April, 1806, they pass a law prohibiting the importation of certain British goods. The acknowledged object of this law was to coerce Britain to agree to our own terms. Did this law evidence a disposition to be friendly upon our part; or was it calculated to inspire a friendly temper on the part of England? It was fuel to the flame of discord. The British government is not less high-spirited and proud than our own, and the attempt to force them to terms was the likeliest course which could have been pursued, by provoking retaliation, to widen the breach between the two countries. This measure enforced, when negotiation was going on and promised a favorable result, is no small proof, in my mind, that the executive was satisfied with the forms of negotiation, but wanted no treaty with England.

I proceed to inquire, whether our differences with Britain were not of a nature to be compromised; and if our government had been sincerely disposed, whether they might not have retained the relations of amity with that power.

First, as to the rule of 1756. This rule was founded on the principle, that a neutral nation could not ac-

quire a right to trade, by the cession of one belligerent in time of war, which did not exist, but was withheld in time of peace. The rule was supported on the principle, that a neutral could not come in aid of a belligerent, and cover its property on the ocean, when it was incapable of protecting it itself.

I am not going to defend this rule, nor to inquire into its origin. Thus much I will say, that if it was the British rule of 1756, it was the express rule of the French maritime code in the years 1704 and 1744. I will not trouble you with reading the decrees of the French monarchs, which I have on the table, made in the years mentioned, and which prohibit to neutrals any but a direct trade to the colony of an enemy. Though the rule of 1756 may not be an ancient rule, yet we must admit, that it was not a new rule, introduced in the present war and contrived to ruin or injure the American commerce.

France was unable to trade with her colonies; the United States became her carriers, and under our flag, the manufactures of the mother country were safely carried to the colonies, and the produce of the colonies transported to Europe. This trade was certainly as beneficial to France as profitable to the United States. Britain only was the sufferer, and the rule of 1756 was revived, in order to take from French commerce the protection of a neutral flag. Our government were certainly right, in claiming the free enjoyment of this profitable trade, but the only question is, whether the neutral and belligerent pretension did not admit of adjustment, by each side making an equal concession of points of interest.

The treaty of 1806, which the President rejected, fairly compromised the dispute on this subject. The eleventh article of that treaty secured to the United States the carrying trade of France and her colonies, subject to terms somewhat inconvenient to the merchant, but rendering it no less beneficial to the nation. The treaty requires that goods, exported from France or her colonies in American vessels, shall be entered

and landed in the United States; and when exported from France through the United States to her colonies, shall be liable to a duty of one *per cent.*, and from the colonies to France of two *per cent.*, to be paid into our own treasury. This regulation of benefit to the government, by the duty which it gave to it, was of little prejudice to the trade, and there is no room to doubt, that the trade, thus secured from the spoliations to which it was before subject, would have flourished beyond its former limits.

Our differences, therefore, as to the carrying trade so much harassed by the British rule of 1756, not only admitted of compromise, but was actually settled by an arrangement in the treaty of 1806, with which the nation would have been perfectly satisfied.

The second head of dispute regards the practice of constructive blockade. The complaint on this subject was, that blockades were formed by proclamations, and that neutrals were compelled to consider ports as blockaded, before which no force was stationed. That the principle of blockades was extended to unwarrantable limits, is most certainly true; and there is no question as to our having just cause to complain of the vexatious interruptions to which it exposed our trade. The present war between France and England is without a parallel between civilized nations; it is not a struggle for renown or for ordinary conquest, but on the part of Britain, for her independence and existence. Principles of neutrality or of right have been little regarded upon the land or upon the ocean; and the question with the belligerents has been less, what the law of nations permitted them to do, than what their strength enabled them to accomplish. It is unlawful for a neutral to attempt to enter a blockaded port; but a port cannot be considered as blockaded, unless a force adequate to the end is stationed before it. The blockades, therefore, which England created, simply by a proclamation, were an abuse, of which neutrals had just cause to complain.

The United States did complain, and these com-

plaints were listened to by the British government. The tenth article of the treaty of 1806, has made provision on the subject ; and though England has not renounced the principle of which we complain, yet it is qualified by the notice which is required to be given to the vessel attempting to enter a blockaded port, before she is exposed to seizure and confiscation. The provision in the treaty, would no doubt have corrected, in a considerable degree, the abuse from which we had suffered, and it was our policy to have waited for better times for a completer remedy for the evil.

But, sir, the last head of dispute, which I enumerated, was made the chief and most important ground of complaint against the British government ; I mean the searching American vessels for British seamen. The right claimed by England was to seize her own seamen on board our private vessels. The right to search a public vessel, or to seize an American sailor, was never asserted by the government. The claim, however, which was insisted on, involved a point of equal interest and delicacy to both countries. There is nothing novel in the pretension, that a nation, engaged in war, has a right to recall her subjects from foreign countries or from foreign service to assist her in the war.

Every nation in Europe has claimed and exercised the right. Our government has not denied it ; but the consequences of the manner of exercising it have formed the ground of our complaint. Has a belligerent a right to search a neutral vessel for her seamen ? I should suppose not. This question between other nations is of small importance between the United States and Britain, it is of great magnitude.

The sameness of manners, habits, language and appearance render it always difficult and sometimes impossible to distinguish between an English and an American sailor. If the right to search for British seamen were admitted, there would no longer be security for the American sailor : the right admitted, I have no

doubt our navigation would be ruined. As an American, therefore, I would never concede the principle. Let us see, however, how the case stands in relation to Britain. Her navy is the shield of her salvation; whatever impairs its strength diminishes her power and safety. Tenacious as she has ever been of personal liberty at home, yet when men are wanted for her fleets, the *habeas corpus* sleeps. Her sailors are her right arm which withers as she is deprived of them. From the seductions of our maritime service she has every thing to dread. Our merchants can give her seamen a dollar for every shilling which she is able to afford them.

They shall be better fed, more gently treated, and exposed less to hardships and danger. Let them find a secure asylum on board our merchant ships, and how soon will the decks be thinned of the English ships of war. Which has the most at stake on this subject, England or America? I will not decide the question; but this is evident, that neither will ever unconditionally relinquish the principle for which she has contended. At this crisis, it was impossible for our government to expect the formal abandonment, by the British government, of this right of search. What course, then, should they have pursued? They should have temporized on the point, as Britain was willing to do, and waited for a more propitious epoch, for the final arrangement of the dispute.

Your commissioners, who negotiated the treaty, found that it was impracticable to obtain the cession of the principle for which they contended, and upon their own responsibility, to their great honor, to preserve the peace of the two countries, accepted assurances from the British ministry, which, in their opinion, and I have no doubt in fact, would have effectually removed the abuses of which we complained. I beg pardon of the senate for reading an extract from the letter of Messrs. Monroe and Pinkney, of the 3d of January, 1807, which contains the assurances to

which I refer: "we are sorry to add, that this treaty contains no provision against the impressment of our seamen; our despatch of the 11th of November, communicated to you the result of our labors on that subject, and our opinion, that although this government did not feel itself at liberty to relinquish formally, by treaty, its claim to search our merchant vessels for British seamen, its practice would, nevertheless, be essentially, if not completely abandoned. That opinion has been since confirmed by frequent conferences on the subject with the British commissioners, who have repeatedly assured us, that in their judgment we were made as secure against the exercise of their pretensions, by the policy which their government had adopted in regard to that very delicate and important question, as we could have been made by treaty. It is proper to observe, however, that the good effect of this disposition, and its continuance may depend, in a great measure, on the means which may be taken by the Congress hereafter, to check desertions from the British service. If the treaty is ratified, and a perfect good understanding produced between the two nations, it will be easy for their governments, by friendly communications, to state to each other what they respectively desire, and in that mode to arrange the business as satisfactorily as it could be done by treaty." Such was the footing upon which our commissioners were wisely disposed to leave this delicate affair. And would to God that our President wishing, as sincerely as his friends profess for him, to accommodate the differences between the two countries, had as prudently agreed to the arrangement made for him by his ministers! What has been the consequence of this excessive anxiety to secure our seamen? Why, that your service has lost more sailors in one year of embargo, than it would have lost in ten years of impressment.

But, sir, in this lies the secret—a secret I will dare to pronounce. Your President never meant to have a

treaty with Great Britain. If he had intended it, he would have taken the treaty of the 31st of December, 1806. If he had intended it, he would never have fettered the commissioners with *sine qua non*s which were insuperable. It was an invariable article in the instructions, to form no treaty, unless the claim to search merchant vessels for deserters, was utterly abandoned; this was never expected, and at the arduous crisis, at which it was insisted upon, it was impossible to expect it. And yet, rather than temporize on the point, rather than accept the actual abandonment of the principle, without its formal renunciation, a treaty, the work of years, negotiated by his favorite minister, and calculated to appease the animosities, existing between the two nations, is rejected.

You will bear with me, sir, while I say, that this precipitate and fatal measure is the cause of all the embarrassments which we have felt, which we are feeling, and which we are likely to suffer. I ask, why was this treaty rejected? We are told, for two reasons: first, because it contained no engagement against the impressment of American seamen on board merchant vessels: second, because of the collateral declaration of the British commissioners, that England retained the right to retaliate upon France the principles of her Berlin decree, if the United States should submit to its execution. I have shown, from the public documents furnished to us by the President, the footing upon which our ministers placed the point of impressments. Our commissioners considered the assurances, given them by the British ministers, a better pledge for the safety of our seamen, than a formal provision in the treaty. But if these assurances had even not been given, the treaty would not have compromised our rights or prejudiced our interests on the subject; in the meantime, it would have induced more friendly relations and prepared both countries for such further concessions as their mutual interests might require. To me it is a matter both

novel and surprising, to discover in our President this strong and unyielding attachment to the highest points of our maritime rights. I had thought, before, that he was not so friendly to our navy, to our merchants, and to our commerce. I had thought, that he would rather our ships were exchanged for farming utensils and our seamen converted into husbandmen. But now, sir, it seems, so highly does he value our navigation, that he prefers hazarding all the calamities of war, rather than suffer one feather to be forcibly plucked from the wing of commerce.

Can any one believe, that our government seriously intended to conclude a treaty with England, when our commissioners were instructed to make no treaty, unless Britain formally consented, that our merchant flag should protect every deserter from her navy? The insertion of this *sine qua non* in the instructions, is sufficient to satisfy my mind, that there was no sincerity in the negociation which was carried on with the British government.

We have been asked, by the honorable gentleman from Virginia, (Mr. Giles,) whether it can be imagined, that such men as King, Monroe and Pinkney, would have colluded with the executive, or if they would not have borne evidence of his insincerity, if such had been the fact. Mr. King, he tells us, is a federalist, to whom we have lately given proof of confidence and attachment. Mr. Monroe he represents of a disposition lately not to be guilty of concealment, through affection for the administration, and Mr. Pinkney is said also to be a federalist. All this the gentleman may take as true. But Mr. King, sir, was never engaged in this negociation; and as to Mr. Monroe and Mr. Pinkney, I most clearly acquit them of any collusion with the President; because, so far from colluding with him, they have acted against his secret and express instructions. Surely I have no reason to doubt the sincere disposition of these gentlemen to make a treaty with England. when they con-

cluded one under the responsibility of acting against their orders. No, my charge of insincerity against the executive is founded upon the documents a long time secret, now public, and upon the nature of the objections which have uniformly obstructed the adjustment of our differences with Britain.

The second impediment to the ratification of the treaty, was the declaration of lords Holland and Auckland which accompanied it. What did this paper impose upon us? Resistance to the Berlin decree; and will you permit me to ask, whether it was ever your intention to submit to that decree? You do not mean to submit to the orders in council, and does not the Berlin decree go to the extent of those orders? Are you better prepared, or more disposed to submit to France than to England? No, I hope we shall agree to fight before we consent, that either of those powers shall give laws to the ocean. I know, at one time, it was pretended, that the Berlin decree was designed only as a municipal regulation; municipal when it declared England and her dependencies in a state of blockade, and their manufactures and produce liable to capture. It is true, that the minister of the United States in France, got some such explanation of the decree from the French minister of marine. He did not consider it as derogating from the treaty of 1800, between France and the United States. But when the emperor is applied to, by the grand judge, his answer is, "that since he had not thought proper to express any exception in his decree, there is no ground to make any in the execution, with respect to any thing whatsoever." When the minister of marine was applied to for his construction of the decree, he gave his opinion, but affected not to be the proper organ of communication on the subject. In this you see that craft and force were both united for the most destructive execution of the decree.

The decree was allowed to sleep for nearly a year; a public minister delivers his opinion that it was not to

infract our treaty; and, after our property, to an immense amount, is allured by these deceitful appearances into French ports, his imperial majesty declares, in effect, through his minister of justice, that the treaty with the United States was not expressed as an exception in the decree, and therefore its provisions were to form no obstruction to its execution. So, sir, we have probably lost some millions of dollars by our anxiety to consider this decree as a municipal regulation. Suppose, however, it had not designed what its terms so plainly express—the blockade of the British isles. In such case, what embarrassment would our government have incurred by agreeing to the proposition of the English commissioners, to resist the decree if executed against our neutral rights? If France had confined the execution of the decree to her own ports, Britain could not have complained of the execution of her own law, within her own jurisdiction, and we should have had nothing to which we were to oppose resistance. But suppose the decree had been executed on the ocean, and you had become bound to oppose its execution by force; would your undertaking have been greater than the offer you lately made to England, in case she would repeal her orders in council?

I shall hereafter have occasion to view this subject in another point of light; but at present I ask, did not Mr. Pinkney mean to tell Mr. Canning, under his instructions from the President, that if Great Britain would repeal her orders in council, the United States would resist the execution of the French decrees? This is stated in the letter of Mr. Canning to Mr. Pinkney, of the 23d of August, 1808, and admitted, as it is not denied, in the letter of Mr. Pinkney to Mr. Canning of the 8th of October, in the same year. Your government, then, would now agree to the terms which they so indignantly repelled when first proposed to them, and on the ground of which, in part, they refused the treaty which their ministers had negotiated.

It would seem, then, that no other material ground remains for the rejection of the treaty, than the want of a formal clause to secure our merchant seamen against impressment. Is it your intention ever to have a treaty with Britain, or are the nations always to continue in a state of strife and contention? You were offered the treaty of 1794, and you refused it. Messrs. Monroe and Pinkney negotiate a treaty in 1806; the President rejects it, and insists on a point in the most obnoxious form, which he knows will never be conceded, and without the concession of which, no treaty is ever to be made. Does all this look like a sincere disposition to adjust our differences with England?

It is of importance, Mr. President, to consider, in the late negotiation, who were the men in power in the respective countries. Can our President expect ever to see an English administration more disposed to treat upon favorable terms with this country, than the Fox administration? The name of Fox is the most grateful English name that is known to an American ear. From my childhood I have heard, that Fox was the friend of America. He was the early champion of our rights, when Britain first attempted to deprive us of them. His voice was always raised in our favor, in opposition to the power of the crown. Fox was at the head of the ancient whig interest of England, and a firm supporter of the principles of freedom. He was, too, a philanthropist, and deemed in sentiment, by some, a citizen of the world. He was additionally, sir, a French citizen, as well as our worthy President.

I hope it will not be thought that I mention, with any invidious view, this last circumstance. I state it only for the material purpose of showing the community of character between these great men, which recommended them to the fraternization of the French people. If Mr. Jefferson was not willing to accept the treaty which Mr. Fox offered him, from what administration in England can he ever expect a better?

And may I not ask, also, if he can look to other men in the United States, in whom he will have more confidence, for their skill and integrity, than in those whom he employed in the late negociation? We have all heard, that Mr. Monroe was his early and bosom friend, and we have all seen, that he has been his favorite minister. Let us also not forget the time when the treaty was concluded: no time could have been more propitious; it was at the moment when England was sinking under the triumphs of her adversary. Bonaparte had just broken to pieces the power of Prussia, driven the Russians to their frontier, and converted their emperor from an enemy into an ally. If you are not satisfied with the terms which England was willing to grant you, at a moment of depression, can you look for better, when she has less to fear from your enmity, or to hope from your friendship?

You find, sir, that your President was favored by every circumstance, in the negociation of the treaty which he finally rejected. It is not a little remarkable, that he should have undertaken to reject this treaty, without consulting the senate, his constitutional advisers. He was in possession of a copy of the treaty while the senate were in session; they were not allowed to see it: he would not trust their opinions upon it. They might have approved it; and the responsibility would have been still greater to have rejected it, after they had agreed to it. You will pardon me for speaking plainly; it is my duty to express my conviction, though I may happen to be wrong.

To me it has always appeared, that your President was taken by surprise, when he found a British treaty laid at his door. His instructions to his ministers precluded the possibility of a treaty, and it never entered his head, that they would have been daring enough to conclude a treaty against his orders. But the ministers having obtained what they considered the substance, disregarded the form, and sent a treaty, as little looked for as desired. I do not mean to contend, that the President was bound to lay this treaty before

the senate, but in exercising the power to reject it, without their advice, he took upon himself a great responsibility, and is answerable for all the consequences of an act exclusively his own. To this act, in my opinion, may be attributed the present embarrassments of our country. Had the treaty been accepted, our trade would have flourished as heretofore, and with it our agriculture, manufactures and the fisheries. But it pleased our chief magistrate to reject it, and every day has since added to the gloom which has spread over our country. In this condition was the state of our affairs, when an unexpected event occurred, calculated to inflame, to the highest pitch, the animosity of our citizens against the British government. I allude to the attack of the Leopard upon the Chesapeake, in June, 1807. In relation to this outrage, the people of America felt but one sentiment. A more wanton, flagitious and perfidious act was never perpetrated. It is an act which America never will nor ought to forgive, till it is expiated by adequate satisfaction. But still, sir, we must restrain our indignation, while we inquire whose act it was, and who is answerable for it. The material inquiry is, was it or has it become the act of the British government?


The British minister, as soon as the news of the occurrence reached him, voluntarily and unasked, declared, that it was unauthorized by the government. He disavowed it in parliament, and the king himself confirmed the disavowal. It rested, then, as the act of admiral Berkeley. The nation, however, were bound to make us satisfaction for the injury, done us by their public servant. If they refuse adequate satisfaction, they adopt the act. The government were sensible of this obligation, and they took steps to comply with it. They sent a special minister for the sole purpose of making reparation for the injury, we had suffered. This minister we received, and agreed to consider the outrage, which had been committed, as the act of Berkeley. Considered as the act of the government, it would have been an act of open war.

- You commence a negociation as to the terms of reparation; but here the same spirit, which rejected the treaty, baffles every effort to accommodate this new cause of offence.

When informed of the attack upon one of our public vessels by a British man-of-war, under the orders of an admiral, our government had reason to apprehend, that no individual, however high in rank, would have hazarded so daring an outrage, without the authority of his government. With this view, and to preserve peace and tranquillity in our harbors, we may consider the President as justified in issuing his proclamation, interdicting the entrance of British armed ships into the waters of the United States. But, sir, the moment it was ascertained, that the act of Berkeley was unauthorized; so soon as the government had solemnly disavowed it and offered reparation, the proclamation ought to have been withdrawn. Are you permitted to punish a nation for the acts of its subjects, in which it does not participate? The law and the practice of civilized nations, on this point, is explicit and uniform. When the subject of one power offends against the sovereignty of another, this will not justify retaliation upon other subjects of the same power with the one who offended. It has uniformly been our own doctrine, and it is the common interest of mankind to maintain it, that in such case you must apply to the sovereign of the party offending, and abstain from any act of hostility, till he refuses you reparation. This course our government did not pursue; for the act of an individual they retaliated against his nation.

Upon the grounds which have been stated, you may excuse the issuing of the proclamation; but what excuse is there for its continuance, when we acknowledge ourselves, in treating for reparation, that the act, complained of, is the act of an individual, and not of his government? A proclamation like the one issued, without adequate cause, was a breach of neutrality, and a just cause of war. For, to admit into your ports and grant succor to the armed ships of one

belligerent, while you exclude those of the other, is not consistent with that impartiality which belligerents are entitled to claim from neutrals. The point was so understood, and so felt by the British government; and they required, as they had a right to do, that, as they had not committed the act complained of, that the proclamation, which had an operation or appearance of hostility against them, should be recalled. If they refused reparation, we had a right to redress ourselves; but had we a right to take the redress into our own hands, and, at the same time, to require them to make us reparation? When you ask justice, you must expect to do it. A nation should be as ready to perform its duties, as to insist upon its rights. The British government had given sufficient evidence of a disposition to grant satisfaction for the injury done us, by sending to the country a special minister for the purpose; that minister was instructed to make voluntary reparation, but to grant none under the coercion of the proclamation. In his first communication to the secretary of state, he informed him, that his powers did not allow him to make reparation, unless the proclamation was withdrawn. The affair was then managed with sufficient adroitness to catch the popularity of the country; when it was known, that the proclamation must be first withdrawn, its revocation and the reparation, were proposed by the secretary, as simultaneous acts. Why was this proclamation so tenaciously insisted on? If you had revoked it, and the reparation offered was deemed insufficient, you would have had no difficulty in renewing it. It is no task to our President, to issue a proclamation: at most, we contend only for a point of etiquette, a thing important, perhaps, in a monarchy, but very little respected among us republicans. Give me leave to say, that in this negotiation, I soon became persuaded, that the difference in question, was not to be settled by itself, but was to stand open in the general account. If there had been a sincere desire to settle it, the paltry measure of the proclamation would not have formed an obstacle for a



moment. I have here a new and great proof that the executive is not sincerely desirous of a full and friendly settlement of all differences with England. It may be difficult to trace the motive which governs; but I can plainly discover the same spirit now, which agitated the nation in 1795: a spirit then subdued by the mighty influence of Washington, but which has since risen with increased strength, and now dominates.

I consider, sir, that the measures of the administration have been, not only insincere, but extremely feeble; they will not settle their differences with England, and yet have not courage openly to quarrel with her; they pass a non-importation act to punish the impressment of seamen and the aggressions upon our carrying trade; they exclude, by proclamation, British armed ships from our waters, to avenge the outrage on the Chesapeake: and what benefit to ourselves or detriment to our adversary, have these measures produced? They are calculated to increase the animosity between the nations, but I know of no other effect they can produce. So far, indeed, have they been from constraining Britain to accede to our terms, that they have rendered her more regardless of our rights and interests. She has since given us new and more feeling causes of complaint, by her orders in council of the 7th of January, and the 11th of November, 1807. These orders take from us the trade of nearly all Europe. They are the counterpart of the French decrees. God forbid, that I should justify them! I will never admit that France or England have a right to make laws for the ocean: nor shall I ever hesitate, when they insist upon the execution of such laws, to declare myself for war. I am as free as any gentleman in this senate, to protest against submission to the decrees of France, or the orders of England; but is not submission to the decrees, as disgraceful as submission to the orders? The gentleman from Virginia said nothing of the decrees,—nothing of a war with France—his resentment was confined to Britain. We have, sir, to choose our enemy between these two

nations. We are hardly equal to a contention against both at the same time. How does the case stand in relation to them? The emperor first issues his Berlin decree, interdicting our trade to England and her colonies. England then gave us notice, if you allow France to prevent your trading with us, we will not suffer you to trade with France. If you are tame enough to submit to a French decree, you will surely not be too proud to yield to a British order. Assure us that you will resist the execution of the decree, and we will not retort its principles upon you. This our government declined doing, and left England to pursue her own course. Her government then issues the order of the 11th of November, retaliating the Berlin decree. I do not defend this order; but if the administration had resisted, as they ought to have done, the Berlin decree, we should not have seen the order. What now is to be done? England insists on her orders, as a measure of retaliation against France. Prevail on France to repeal her decrees, or agree to resist the execution of them; and if England then executes her orders, I will be as free as any man to go to war with her.

No such course has been taken, but what have we done? Laid an embargo. And for what purpose did we lay the embargo? This is a subject of conjecture to some; but our government tells us, it was to preserve our ships, our sailors and our mercantile capital. Some have said, to preserve them from the operation of the orders in council. When the embargo was laid, the orders in council were not known in this country. Of this fact, I want no stronger proof, no stronger can exist, than that the President, in his message to Congress, in which he recommends the embargo, says not a word of these orders in council. No, the embargo was not produced by the orders in council, nor by any thing which we heard from England, but by news which had then been recently received from France.

We are told the embargo was to save our ships,

our sailors and mercantile capital. I do not believe that such was its object, but if such were its purpose, we have been miserably disappointed. The embargo, for a short period, might have been a prudent measure. As a step of precaution, to collect our seamen and mercantile capital, I should never have complained of it. But it is insulting to common sense, to propose it as a scheme of permanent security, as it must daily consume, and finally annihilate the objects of its preservation. Your ships once in, and the danger known, you should have left your merchants to their own discretion. They would have calculated the profits and the perils, and been determined by the balance of the account. No class of society is more capable of taking care of itself.

It is said, we have preserved our seamen. The President has as gravely repeated this remark in his message, as he recommended to us to devise means to dispose of our surplus revenue, at a moment when it was evident, that the situation of the country would drain the treasury of its last dollar. Where are your sailors? They are not to be seen in your ports. One half that were employed by you have passed into foreign service, and many that remain, are to be found begging in your roads and at your doors.

As to our ships and mercantile capital, the one tenth part of the loss from decay and waste and want of employment, would have paid for an insurance against every danger to which they would have been exposed. It is not my intention, Mr. President, to detain you with any details on this subject, as I should be compelled to repeat the same things, which have been stated by other gentlemen on a former occasion. But there are some general views of the subject, not undeserving of notice, which yet remain to be taken.

If the embargo were ever a measure of precaution, it certainly has long lost that character. As a measure of coercion, it was hopeless, unless completely executed. If the party to be coerced was partially supplied, the object was defeated. Now I ask you, sir, if

your government ought not to have been acquainted with its own powers, its own people, and its own situation, well enough to have known, that it was impossible for it to confine the whole produce of the country within its limits, for any length of time? Ought they not to have foreseen the vast temptations, which have arisen and presented themselves, as well to our own citizens as to foreigners, to combine, in order to break or elude your laws? Ought they not to have known, that, with our extent of coast and frontiers, with our numerous waters, that a wretched gunboat navy, aided even by ten thousand regulars, was not capable of covering our borders and shutting up the numberless outlets of the country? Could they expect, that patriotism was to feed and to clothe the people of the north; or, that thousands would submit to starve, in order to contribute to the success of an experiment?

We all know, that the opposition to the embargo, in the eastern states, is not the opposition of a political party, or of a few discontented men, but the resistance of the people to a measure which they feel as oppressive and regard as ruinous. The people of this country are not to be governed by force, but by affection and confidence. It is for them we legislate, and if they do not like our laws, it is our duty to repeal them.

It is madness to talk of forcing submission, when there is general dissatisfaction. Your government is in the hands of the people; it has no force but what it derives from them; and your enforcing laws are dead letters, when they have once been driven to resist your measures. It would, sir, be some consolation, amidst the sufferings which this miserable system has caused, if, in looking abroad, we could discover, that the nations who have injured and offended us, felt its oppression only equally with ourselves. But when we find, that we have been scourging ourselves for their benefit and amusement, when they can tell us, with indifference and contempt, that they feel for us, but that we must correct our own folly; instead of meeting with the poor comfort which we expected, we are overwhelm-

ed with accumulated mortification. Was this a measure against France? No; the emperor commends the magnanimous sacrifice, which you have made, of your commerce, rather than submit to British tyranny on the ocean. His imperial majesty never approves what he does not like; and he never likes what does not comport with his own designs.

I consider it as admitted, that the embargo was intended to coerce England; and the gentleman from Virginia now contends, that if it had been strictly executed, it would have had that effect. Nothing has happened, that common foresight might not have foreseen. The gentleman has read to you extracts from an English pamphlet, published before the embargo was laid, which predicts the very evasions of the law, the discontents it would produce, and the opposition it would meet with, which we have all had the melancholy opportunity of witnessing. I know the pamphlet was referred to for another purpose—to show, that British gold or influence had corrupted or seduced the Vermontese, before the embargo was imposed. The gentleman may believe the fact to be so if he pleases; but I say, sir, that your government here, with all its means of information, ought to have known as much about the condition of Vermont as a pamphletteer on the other side of the Atlantic.

It seems now to be admitted, and the fact is too evident to be denied, that the embargo has failed in its coercive effect upon Britain. The want of bread, cotton, or lumber, has neither starved her subjects, nor excited them to insurrection. Some gentlemen have had shrewdness enough to discover an effect in an English price current, which might, to be sure, have been owing to the embargo, or might have been produced by the operation on the market of some private speculations. But it has enriched Canada, and has taught the islands their policy and ability to live without us. Would to God, Mr. President, that the embargo had done as little evil to ourselves as it has done to foreign nations! It is ourselves who are the vic-

tims of the miserable experiment. Your treasury will lose at least fifteen millions of dollars, and your country, in addition, not less than forty. This tax has not been so much felt, though it has not in truth been less paid, because the embargo has not taken the money out of our pockets, but only prevented it going into them. This measure has been not only ruinous to our interests, but it is hostile to the genius of our government. It calls for an increase of your regular army, and a vast augmentation of your military force. Ten thousand bayonets were not sufficient to enforce it, but fifty thousand volunteers, (as I have seen by a bill on the table,) were to be invited to assist in its execution. That measure of an administration which arms citizen against citizen, or requires the soldier to act against the citizen, is baneful to liberty. If persevered in, there would soon be an end of free government. The effect is also to be deprecated, upon the spirit of your military. They are called upon to execute laws they are unable to construe, and, in obeying their orders, are exposed to the commission of murder. Your naval forces are sent out to cruise, not for enemies, but for defenceless fellow-citizens, and they return to boast not of a gallant battle, but of a miserable seizure, which may bring poverty upon some wretched family in their own country. It has been often said in defence of the embargo, that the nation had nothing left but that measure, submission, or war. Can you distinguish between the embargo and submission? Can you pretend to say, that it is a voluntary self-restriction imposed as a matter of choice? Can it be denied, that it has been forced upon us by the conduct of one or both of the belligerents? And with a full knowledge of the fact, can you describe it as any thing but vile, abject submission? France tells you, you shall not trade to Britain, you obey her: Britain then tells you, you shall not trade to France, you submit. You have not resisted the decrees or orders, but have complied with the object of both. We have borne the burden of the embargo till it has almost broke our backs, and even when

we are sinking under it, we pretend to say, it was no task to bear it. In this case, it is then said, there only remained submission or war. Submission I put out of the case. I trust in God it never entered into the head of one American! But I deny, that war is necessarily the alternative; and I never will admit it, till I see sincere efforts made to accommodate our differences with England. The President, in his message at the opening of Congress, would give us the impression that Britain had refused the last and the fairest offer it was in the power of our government to make in order to preserve peace. It will be important for us to understand the nature and extent of that offer. The proposition no doubt was made by Mr. Pinkney, in conformity to his instructions. To avoid error, I will take the liberty of reading to the senate the words of Mr. Pinkney to Mr. Canning on the subject, in his letter of the 23d of August last.

[Mr. Bayard here read the extract.]

Now, sir, what is the amount of this boasted offer? Nothing more than the assurance of our minister of an intention of the President to remove the embargo, in case the orders in council were actually repealed. Great Britain was to repeal her orders, allow the President to make the most of that act with her enemy, and trust to his executing his good intention when it should suit his good pleasure. The offer to England related only to the embargo, when this experimental measure, so far from being injurious to her, was adding to her wealth and strength. It leaves her navigation without a rival on the ocean, and has restored to her more seamen, than she could have impressed in ten years. Well may Mr. Canning say, there is no assignable relation between the removal of the embargo, and the repeal of the orders in council. The President had instructed his minister to assure the British government, that the embargo was designed solely as a municipal regulation, and not as an act in any degree hostile to them. The orders in council were a measure of hostility against France; and we

offer to revoke a municipal regulation operating in favor of Britain, if she will relieve us from the pressure of a measure adopted against her enemy. But let me ask, was there any offer made to rescind the proclamation or to repeal the non-importation law?—Two measures much more offensive and hostile to Great Britain, than the embargo. With these laws in force, it was a mere mockery to offer the removal of the embargo. What more proof do we want, than this transaction affords, that the executive has not been sincere in his endeavors to restore a good understanding between this country and England. And therefore it is that I contend that war is not unavoidable with that nation. I confess, sir, I should think a war with England, one of the greatest evils which could befall this country; not only from the sufferings which it would inflict upon it, but also from the fatal connexion with France to which it would give birth.

We have seen what has been the course of the government in relation to Britain: and I will beg a few moments to examine what has been its conduct in regard to France? The last proposition made to Britain is well known; the documents fully disclose it; but what at the same time was proposed to the French government? This we know little of. We have not been furnished with the correspondence with that government on the subject. The transaction is covered with a dark and impenetrable veil. The President tells us in his message, that the same proposals were not made to the two belligerents, and it would seem from what he hints, that the offer to France, in case she repealed her decrees, was to join her in the war against England. It cannot be denied, that we have lost more by the spoliations, and have been more harassed under the arbitrary edicts of France, than of England. By the treaty of 1800, we gave up more than twenty millions of dollars which had been seized, and, against all right, confiscated in France. Since that time, we are officially informed, that an amount nearly equal has been seized and confiscated or sequestered. She has wanton-

ly burnt our ships on the ocean and made no compensation. Her Berlin decree of the 21st of November, 1806, commenced the present system of outrage upon neutral rights. In effect, it interdicts all trade with England and her colonies. This is followed by the Milan decree of the 17th of December, 1807. Under this edict, an American vessel, which has been searched or visited against her will, by a British cruiser or is proceeding to or returning from England, is liable to be captured as good prize. And finally, to complete this monstrous system, comes the Bayonne decree, the 17th of April, 1808, which declares every American vessel, found upon the ocean, liable to seizure and confiscation. Opposed to these accumulated violations of our neutral rights, what steps has our government taken against France? Have they passed a non-importation act, issued a proclamation, or imposed an embargo? The last measure is general in its terms, but is avowedly against England alone. No, they have contented themselves with memorializing, remonstrating and protesting. Against England we took every step short of war, against France we have employed nothing but gentle words. Has your government then shown an equal resentment against the wrongs suffered from these two powers?

It may be from the habit of enduring; but we do not feel an aggression from France with the same quickness and sensibility that we do from England. Let us see, sir, the same conduct observed with regard to both belligerents; let us see the impediments to a friendly settlement with Britain removed; let us witness a sincere effort made, to regulate the intercourse of the two nations by a treaty, formed on principles of mutual concession, and equal interest, and I will answer for it, if Great Britain persists in her orders, that you will find no division in this country on the question whether we shall submit to them or resist their execution.

Permit me, Mr. President, to detain you a few moments longer. I am sensible that I have already trespassed upon the indulgence of the senate, and I shall

hasten to conclude the remarks, which I have thought it of importance to make upon the resolution which has been submitted.

The objects of the resolution are embargo, non-intercourse and non-importation as to England and France, and their colonies. The existing embargo is to be repealed only in part; one half of the channel of your rivers is opened, the other is to be embargoed; and vessels may proceed to sea, but they must not pass through the embargoed waters. I can well conceive of one port in the United States being embargoed and the others open: but of an embargo which gives the right to every vessel in a harbor to leave it, I confess I have no comprehension. I should have supposed, that the honorable gentleman might have ventured to repeal the embargo generally, and trusted to the provisions on the subject of non-intercourse to accomplish what seems to be the object in view, in partially retaining it. Sir, it is a strange infatuation, that the name of this odious measure should be preserved, when the thing itself is abandoned.

And what, sir, are we to gain by a non-intercourse? It can never benefit the nation; it is nothing more than a part of that miserable mosquito system, which is to sting and irritate England into acts of hostility. I have no doubt she sees the object, and she will take care not to give us the advantage which would be derived from war being commenced on her part. But I ask, what will be the effect of non-intercourse? I see no other than that it will require two voyages instead of one, to transport our produce to the markets of the interdicted countries. You carry your merchandize to Lisbon, and there deposit it; and from thence it is carried in foreign ships to England and France. Who will pay the expense of this circuitry of transportation? The United States. It will be deducted from the price of your produce. Can the gentleman contrive no system which will operate with less severity upon ourselves than upon those whom he deems our enemies? If the resolution has no design, but what is

apparent on the face of it, it is evident that its sole operation is against ourselves. Its inevitable effect will be to reduce the profit of what we have to sell, and to increase the expense of what we have to purchase. I can perceive also, sir, that it will be a measure of unequal pressure upon different sections of the country; and that its weight will fall heaviest upon that part of the union already too much galled to suffer any addition to its burden. The lumber, the live stock, the fish, and the articles of common exportation to the eastward, will not bear the expense of double freights. Will they thank you for repealing the embargo, and adopting a substitute which continues to shut the ports of the north while it opens those of the south? Will they thank you for a measure which deprives them even of the miserable consolation of having fellow sufferers in their distress? If this resolution be adopted, you do nothing to heal the wounds which you have inflicted. If New England loses her trade, she will derive no comfort from its being under a non-intercourse, and not under an embargo law.

It is a part of the resolution, that we are to import no produce or merchandize from England, or France, or their colonies. Do you expect, sir, that a law, to this effect, could ever be executed in time of peace? As to the manufactures of England, she can make them the manufactures of any country in Europe; she will give you the exact marks, and stamps, and packages of any place to which your trade is open, and she will defy you to distinguish her fabrics from those they attempt to imitate. But, sir, the consequence chiefly to be dreaded from such a measure, would be the practice of smuggling, to which it would certainly give birth. Can you expect in one moment to change the habits of a whole country? We know, sir, the power of habit: it is a second nature. Can an act of Congress instantly change your nature? No, sir, they who can afford it, will have what they have been accustomed to. They will pay any price for articles, without which, perhaps, they can scarcely exist. Smuggling must follow. and will follow with forgery and perjury

in its train. It is the honor and character of your trading people which now protects you from smuggling. Break down this sentiment, habituate them to perjury, destroy the disgrace attached to this violation of your law, and you lose half the security and means you have in the collection of your revenue.

The complaint has been made, that while we find fault with the measures proposed, we refuse to point out the course we would have the administration to pursue. I have, sir, no hesitation on my part, to disclose my opinion, or to offer the humble assistance of my advice on the subject. In a few words I will tell you what I would do: place England and France upon the same footing, by repealing the non-importation act, rescinding the proclamation, and repealing the embargo. Then ask for, and insist upon adequate reparation for the affair of the Chesapeake. Make a treaty with Great Britain, if as good terms could be obtained as those in either of the treaties which have been refused. Agree to resist the execution of the Berlin decree, and if she afterwards persisted in her orders in council, declare war against her. Such would be my course. War would be the last resort; and I believe, in my conscience, we should never be driven to it, if the course were pursued with a sincere disposition to preserve peace. Permit me, sir, to notice one remark of the honorable gentleman from Virginia, which had escaped me, and I am done. The gentleman told us, that the removal of the embargo was designed as a concession to our eastern brethren. I rejoiced to hear this sentiment of forbearance. Such sentiments give hopes that the union may still be preserved. We have been led to the brink of a tremendous precipice; another false step, and we shall be lost in the abyss. Our safety is in treading back our steps. We have lost our way. Some *ignis fatuus* has beguiled us. There is a path of safety and honor—the path the nation once trod. Let us endeavor to regain it, and invoke the spirit of Washington to lead us once more into it!







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